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COMMENTARY

ON THE

SCIENCE OF ORGANIZATION

—AND—

BUSINESS DEVELOPMENT

BY

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A TREATISE

ON THE

LAW AND SCIENCE

OF THE

PROMOTION, ORGANIZATION,
REORGANIZATION AND
MANAGEMENT

—OF—

BUSINESS CORPORATIONS

WITH SPECIAL REFERENCE TO APPROVED
PLANS AND PROCEDURE FOR THE
FINANCING OF MODERN BUSI-
NESS ENTERPRISES

"Science is nothing but trained and organized Common Sense, differing from the latter only as a Veteran may from a raw recruit, and its Methods differ from those of Common Sense, only as the guardsman's cut and thrust differ from the Manner in which a Savage Wields his Club."

HUXLEY.

AUTHOR'S NOTE.

Almost immediately after the first edition of this book appeared, a money panic suddenly overwhelmed the country, the cause of which may be directly attributed to the faulty methods heretofore adopted in the organization, reorganization or financing of business enterprises, and incidentally many of the principles herein contended for have thereby been vindicated, and demonstrated to be sound and practical.

In the present volume a number of minor corrections, some omissions, and numerous important additions have been made, so that the original purposes may now be considered as accomplished—namely to present in a brief and concise form, a general statement of the important *practical* questions relating to business organization and the well-settled legal principles necessary for a proper application of the various plans and modes of procedure discussed.

The generous reception the first edition enjoyed has encouraged the author in the belief that this volume has served a useful purpose.

ROBERT J. FRANK.

Chicago, October, 1909.

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INTRODUCTORY

INTRODUCTORY

Before the advent of the corporation, or before the almost universal adoption of that form of conducting business, those responsible for the success or failure of an enterprise were principally concerned about its details. Now such details are delegated to subordinates, and the actual head of the enterprise is more intimately concerned with its policy and its financial plans and general undertakings.

It has been said that the type of man who has genius for acquiring exact technical knowledge is not ordinarily a successful executive, and the accuracy of this statement must, in a measure, be admitted; but it must also appear to those familiar with present conditions that the successful executive not only necessarily possesses an intimate general knowledge of the science pertaining to the particular enterprise under his control, but an equal *general* knowledge of the established rules concerning corporate organization and finance, and the elementary rights of stockholders, as well as the duties and responsibilities of corporate officers.

It is clearly beyond the possibility or legitimate pur-

poses of any book to attempt to so qualify its readers as to enable them to dispense with the services of the legal profession; but *it is possible* to give such a general announcement of the law and approved procedure pertaining to corporate organization and financing—and particularly the practical features relating thereto—as will be of inestimable value to those charged with the responsibilities of such undertakings, and at the same time suggest to the practicing lawyer who has not specialized along those lines the important *practical* questions which inevitably arise for consideration in the course of such employment.

Particularly is this true concerning the reorganization of a business enterprise where the adoption of corporate plans for its conduct is concerned. Innumerable questions there arise which ordinarily do not receive the attention they deserve on account of their far-reaching effect upon the success or failure of the enterprise, or upon the rights of the individuals interested therein.

The contents of this volume may properly be termed a discussion of the *middle* ground between what has ordinarily heretofore been considered within the employment and province of the lawyer—who is called upon to create the corporate entity which is to conduct a new enterprise, or to take over the property of or reorganize an old one—and what might, with equal propriety, be considered within the province of

the promoter or the individuals interested in such undertaking.

Every mistake in the organization of a business corporation discloses ample evidence of either lack of proper knowledge of the questions constituting the middle-ground referred to, or (what is equally as disastrous to the enterprise) the failure to put such knowledge into execution; and this might, and often does arise on account of the fact that the employment of or instructions given the corporation attorney have been *limited* to simply complying with the statutory formalities in the creation of the corporate entity.

Strictly speaking, the lawyer's duty is discharged by simply complying with the instructions of his client, be they ever so faulty; and the client is rarely ever qualified to decide for himself the most important preliminary questions that arise when the first steps are to be taken in launching a modern business venture, namely: the creation of the corporation which is to own and conduct it. Its purpose, capitalization and financial plans, adequate protection for investors or the owners of property to be conveyed, and rules for internal conduct, etc., are each and all matters of first importance, either immediately or at some future period of development; and these and other questions of like significance are not met with in every-day affairs of business life, and rarely in the general practice of the law.

A careful examination of all the works on corporation law now in existence fails to disclose any adequate discussion of the field alluded to above; and this, perhaps, on account of the difficulty attending such a venture, owing to the great variety of conditions which are encountered in actual practice, and the almost hopeless task of attempting to cover such field in any satisfactory manner. But it is believed that a brief and concise announcement of the general principles covering the practical questions referred to, (which have been established by precedent *as practical*) and an equally general discussion of the law relating thereto, must necessarily be of value, particularly to the student or executive who is desirous of acquiring a knowledge along such lines, and who is not inclined or able to devote the time necessary to an extended research, much less to acquire the experience necessary to apply such knowledge once it is obtained.

It may appear to those who simply review the contents of this volume, or who are unfamiliar with its purpose, that the arrangement of the subjects are somewhat unsystematic, and that it discusses only legal questions generally. It is to be hoped, however, that, upon a more careful study of the volume *as a whole,* the connection and continuity will be disclosed, and the fact appreciated that a general, rather than a particular discussion of the subjects in hand is more to be desired—as being of greater practical value,—than an extended discussion of details involving circumstances or conditions which may never be met in actual business life.

The illustrations given in the Appendix are intended to supplement and explain certain important statements or plans referred to in the text, and at the same time serve as suggestions for adaptation by the Profession.

In every work of this character many questions, often considered elementary, are necessarily discussed, for the reason that every book treating on any science must anticipate that such a work will more often fall into the hands of those unfamiliar with such questions than otherwise.

The use of technical language has purposely been avoided, and no attempt has been made to substantiate any principle of law laid down by citations of adjudicated cases or authorities, but careful reference has been had to all the leading works on corporation law, and the laws of the various States, as well as to numerous adjudicated cases which were deemed necessary to insure the accuracy and reliability of the legal principles herein stated.

ORGANIZATION

CHAPTER I.

ORGANIZATION.

A Common Error. Every business has peculiarities and mysteries that cannot be solved by intuition, and the controlling elements that make for success (when recognized at all) are often the result of the accidental occurrence of circumstances rather than the result of any pre-conceived plan. But there are elements which lead to certain failure, and they may, in most cases, be "seen from afar" and avoided by seasonable consideration.

More money has often been made or lost through the plans adopted for financing, organizing or reorganizing a business than in its operation; at the same time mistakes in such plans often prevent well-merited success or occasion individual sacrifice.

There is often a tendency in the selection and promotion of a new enterprise to look primarily, and almost exclusively, to the "opportunities" of the busi-

ness, and to disregard the equally important questions concerning the formation, or methods to be adopted for its successful conduct.

Experience has demonstrated that a business opportunity, otherwise promising, may be unsuccessful without a proper basis for operation, or executive ability behind it to organize the details and properly conduct such a business.

To err in the inception of a business undertaking, in its organization, or in some apparently minor detail, may mean a handicap throughout; and the consequences of faulty formation, or errors of judgment are rarely discovered until experience has pointed them out, and frequently, after it is too late to remedy them. Then, it is but natural to refuse to see or admit such mistakes after they are once made, and to proceed upon a theory that has proven to be erroneous or without the promise of ultimate financial reward.

Individually, serious losses of both money and property frequently occur through manipulations in the coalition or reorganization of business enterprises; and opportunities for permanent and advantageous salaried connection with a consolidating organization are as often forfeited for lack of adequate protection for those entitled thereto.

There are no undertakings in business affairs where so many opportunities for the exercise of skill and

experience are presented, and where the same are so essential to success, as in the construction of a new, or the re-adjustment of the affairs of an established business—such as the devising of practical and advantageous plans for the securing of additional capital, or a regeneration of its vitality.

The business with a proper *foundation* is at least one-third a success; the other two-thirds may usually be acquired by opportunity, and proper and adequate facilities.

The Corporation and Its Advantages.

The Supreme Court of the United States has said that "Private corporations are but associations of individuals united for some common purpose, and permitted by the law to use a common name, and to change its members without dissolution of the association." And also, "A corporation is an artificial person created by law as the representative of those persons, natural or artificial, who contribute to, or become holders of shares in the property entrusted to it for a common purpose. As it is the creature of positive law, its rights, powers and duties are prescribed by the law."

The legitimate purposes of the corporation are to provide a *modern system* for the conduct of business, to

enable two or more individuals to combine their capital and efforts in the accomplishment of a common purpose, and also to obviate the risks and many other disadvantages of the obsolete co-partnership and private ownership of enterprises.

The fact that great fortunes have been amassed and "trusts" created through this modern system simply demonstrates the weakness in the laws of the various States where such organizations have their existence and domicile, and should not militate against the plan itself.

The legitimate advantages of incorporating a business are many and varied. It is impractical to attempt to enumerate all, or any considerable number of them. Among the most prominent, however, are the following:—

It exclusively perpetuates any trade name, and incidentally the good will attached thereto.

It eliminates the dangers of personal liability beyond the money originally invested which attaches to any business conducted by an individual or co-partnership.

It enables the organizer to engage in different pursuits, to more successfully conduct an enterprise, or enlarge the same, with a limited amount of individual capital.

Upon the death of a stockholder, or disagreement,

or separation of the management, the business is not necessarily hampered or interrupted, and the transfer of the individual interest of any stockholder is simplified, and its value readily determined.

The capital invested can be increased at any time to admit of expanding the business, or to enable competing enterprises to join forces, without disadvantage to either.

Employes or customers may be permitted to become interested in the enterprise without the danger of dissolution or other possible objectionable entanglements which almost invariably occur through disagreement of co-partners.

Any stockholder may pledge his individual stock to obtain individual accommodation without jeopardizing the interests of the corporation, which cannot be done by a partner in a co-partnership; besides, the individual debts or personal entanglements of any stockholder will not interfere with the existence or standing of the corporation.

Then, the advantages of the individual stockholder of raising funds upon his individual interest in an enterprise (stock) over that of any other form of personal property is apparent.

In the majority of cases a business may be sold outright to a much better advantage by first incorporating it. It is less difficult to find a number of persons

who would take stock in a company that owned an attractive business than to find an individual who could purchase the whole; and besides, the value of the Good Will can be, in this way, preserved and realized upon, and the price of the business fixed by the owner before it is offered for sale.

Probably the most important of all the advantages are the *opportunities* which are possible to the resourceful individual, and which present themselves in almost every undertaking, and they depend entirely upon the skill, ability and experience of the organizer of the particular corporation.

How to Organize a Corporation.

It is frequently difficult to appreciate or remember that a corporation is an artificial being, and exists *independently* of the stockholders or persons interested in it. By comprehending and bearing this fact in mind, all questions relating to a corporate existence are simplified.

These artificial beings, "invisible and intangible," are created only by legislative enactment. Most of the States, however, have what is termed "General Acts," which means that the Legislatures of these States have prescribed methods of creating corporate bodies, and have delegated to a certain State official,

or officials, certain powers and duties which relieve the applicant for corporate license from the delays and other difficulties incident to direct application to the Legislature itself.

Illinois, for instance, has such a "General Act," passed in 1872, and amended from time to time since its passage. In discussing and illustrating the mode of organizing a corporation, the "General Act" of Illinois will be here followed, and its provisions complied with.

The first step in the organization of a business corporation is the determination by the parties to be interested therein upon some definite object to be accomplished; that involves the important question of business policy, which clients are usually expected to solve for themselves.

For convenience, the advantages of incorporating have been treated under the preceding head; for it is important to understand such advantages in connection with the purposes in view. In fact, the contents of this book are especially intended to be helpful in determining these and other important practical questions, and the principal purpose thereof is to supply such information as is otherwise inaccessible, and it will be necessary to refer to the various headings for a full explanation and discussion on the questions here suggested.

After the objects which it is desired to obtain have been agreed upon and formulated, the next step is to apply to the Secretary of State for a "license to open books of subscription to the capital stock," etc., and for the appointment of commissioners to complete the organization. This application sets forth the corporate name selected; the objects for which the corporation is to be formed; the amount of capital stock; the amount of each share; the number of shares; the location of the corporation, and its duration of corporate life.

In selecting the corporate name, reference should be had to the business contemplated, if this is feasible, and the name should be as short and euphonious as possible. The retention of an established trade name is always desirable, and can usually be accomplished without difficulty.

Care should be exercised in avoiding the selection of the name of a corporation in existence, either in the State where the charter is obtained, or elsewhere, for under the recent law of "Unfair Competition," now recognized by all courts, it has been held that an injunction would lie to restrain the use of a corporate name so similar to one already in existence that it would create confusion in trade, and otherwise be injurious to the business of the company having a prior corporate existence.

The objects of the corporation are, perhaps, the most important rights to be protected in the formation of a corporation, for they frequently give the incorporators many advantages in the development of the business. While it is always desirable to make the objects contemplated as broad as possible, this may be overdone, and under the present Illinois statutes it is necessary to limit the objects of the corporation; besides, the doing of business *ultra vires* (outside the scope of the objects set forth in the application) is unlawful, and may result in loss to the company and lead to other complications.

Determining the amount of capital stock is treated under a separate heading.*

The amount of the shares must not be less than $10, nor more than $100 in the State of Illinois. As to the duration of the existence of the corporation, this may be made the safeguard or otherwise of the rights of the parties; that is, if it is desired to conduct the enterprise for a limited time, that fact can be set forth in the application, and, in consequence, the corporation's life will end upon the termination of the time limit thus set forth. This means that the affairs of the corporation *must* be wound up at that time, regardless of the wishes of the stockholders, and without any further action being taken by them.

*"Capitalization of Corporations," page 51.

On the other hand, if it is not desired to have a limited undertaking, the duration of the corporation should be ninety-nine years (the time limit in Illinois), for one of the chief assets of a business is its trade name, and this should be more valuable each succeeding year.

Upon the receipt of the application, properly executed, the Secretary of State issues what is termed a "license to open books of subscription." This instrument empowers the parties named therein to complete the organization—that is, to have the stock subscribed for according to law, and to give notices, under the statute, to parties subscribing for such stock, of the holding of a meeting to elect directors, etc. The statutes provide that the notice for the holding of the first meeting must be *mailed* to all subscribers to the capital stock at least ten days prior to the meeting day, as determined by the commissioners and subscribers, and set forth in the notice referred to.

There is now a custom among many incorporators of formally waiving the statutory notice above referred to, and of holding the first meeting, to organize, *immediately* upon receipt of the license from the Secretary of State. The question of the legality of so doing was submitted to the Supreme Court of Illinois in 1906 and the court held that "the only persons interested in the result to be obtained by giving notice

of the object, time and place of a meeting of the subscribers to the Capital Stock of a corporation for the purposes specified in the statutes are the subscribers themselves," and that, therefore, if all the subscribers join in such waiver of notice, and the meeting to organize is actually held in accordance with such waiver, the purpose of the statute has thereby been accomplished.

In pursuing this method of completing the organization of a corporation, the waiver of notice should be entered in the Minute Book of the corporation, and bear the *original* signatures of all the subscribers.

Under the present state of our "General Act" it makes it necessary for the commissioners named in the license referred to, to take over, as such commissioners and trustees, for the new corporation when formed, any property which it is contemplated shall be transferred to the new corporation, and this, of course, includes the payment of money, which, under the present act, is required to be done on or before the meeting called by the notice above described, to the extent of 50 percent of the capital stock; that is, one-half of the capital stock must now be paid to the commissioners in advance of complete organization of every business corporation.

Great care must be exercised in the accepting of property in payment for capital stock by the commis-

sioners in question, or they assume a liability which they may not contemplate, or intend to assume.

In the Appendix will be found a copy of a resolution which it is considered covers this question in a practical way,* and the subject of taking over assets other than cash in payment of stock in a new corporation is treated at length hereinafter.†

Appraisals of property to be taken in payment for stock are always advisable, if not necessary, both by the commissioners and directors when elected, and as to the valuation of such property, that is also treated hereinafter.†

Separate minutes of the acceptance and appraisal of property by the commissioners should be entered in the Minute Book for their own protection, and as a basis for a resolution, by the directors, taking over the property from such commissioners, after the corporation is formed.

Upon the meeting day of the subscribers to the capital stock, set forth in the notice referred to, the usual formalities should be observed in all particulars, in the holding of the first meeting and transaction of business thereat, and the minutes should be preserved and recorded in the Minute Book of the corporation, and signed by the parties in interest, if they

*Appendix, page 209.
†"Transferring of An Established Business to a Corporation," page 69.

are not too numerous; at any rate, they should be signed by the commissioners, and attested by the secretary.

At this meeting, the subscribers to the capital stock elect the first Board of Directors, and this is important in relation to the future management and control of the corporation, for the ensuing year, at least; for it must be borne in mind that the directors control the offices of the corporation, and not the stockholders, and that the officers in turn transact the business of the corporation.

The Statutes of Illinois relating to directors provide that the number of directors shall be fixed at the first meeting of the subscribers, and *their* number depends wholly upon the will of the incorporators. Such subscribers may, if they see fit, by resolution, divide the Board of Directors into three classes; the term of office of the first class expiring on the date of the annual election of the company then next ensuing; the second class one year thereafter, and the third class two years thereafter. Thus, at each annual election for directors after such classification, the stockholders elect, for the term of three years, the number of directors constituting such class whose term then expires. In this way, one or more directors will hold office from the beginning of the organization for three years, others for two years, and still others for one

year, if for any reason this plan be advisable, as it frequently is in large corporations. The usual plan, however, is to elect the entire Board of Directors for a period of one year, particularly in small or close corporations.

We now have (at least) three commissioners holding the title to the property or funds of the corporation in process of formation, which have been turned over to them in accordance with the law, and all necessary steps have thus far been taken, including the election of the first Board of Directors, and the recording of the minutes thereof in the Minute Book.

A report in due form of these proceedings is now prepared and forwarded to the Secretary of State, and upon its receipt (if in all things it complies with the law and the original application) a certificate of complete organization is issued and forwarded to the commissioners, who should at once record the same in the office of the Recorder of Deeds of the county where the principal office of the corporation is located; for this is a condition precedent to the corporate life of the company, or its right to transact any other business than that already explained.

The next step is the adoption of a code of by-laws for the government of the company, and it is well to remember that the by-laws are *the internal laws of the corporation,* and as such should set forth the rules

necessary for the proper conduct of the business. This has been made the subject of separate discussion,* and, therefore, need not be further alluded to at this time.

While it is impossible to prepare "stock by-laws" that will meet all the requirements of incorporators generally, still the form given in the Appendix hereto† will be found to be adaptable, with minor changes, to the ordinary business corporation organized under the laws of Illinois.

After the adoption of a set of by-laws for the government of the corporation, the next step to be taken is the election of officers, and they will be such as the by-laws have provided for. The laws of Illinois require every business corporation to have a President, a Secretary and a Treasurer; and leaves it discretionary with the directors as to how many additional offices they shall create.

After the election of officers, if assets have been turned over to the commissioners, to be applied upon the payment of stock subscriptions, the Board of Directors then proceed to appraise and take over the same (if it be property), and to approve or disapprove of the action of the commissioners in this regard. There is no direction in the law for the carrying out of its provisions under which advance payments are

* By-Laws and Their Uses," page 94. † Appendix, page 217.

required, except that they shall *be paid.* It is manifest, however, that inasmuch as the corporation contemplated is not yet in existence, the commissioners are the only proper persons to take title to property, or to receive advance payments on account of stock subscriptions; and for that purpose, they stand in the relation of trustees for the new corporation when formed.

The approved method of taking over property or advance payments made by the stockholders to the commissioners, in advance of complete organization, is for the Board of Directors, by proper resolution, to *ratify, confirm and adopt* the acts of the commissioners in this behalf, if such acts are in fact proper and deemed for the best interest of the corporation. A form of resolution applicable for this purpose may be found in the Appendix,* and will serve as a guide to what is usual under the circumstances here indicated.

The rules relating to the valuation, appraisal and purchase of assets by a new corporation are further, and at length, discussed under the title, "Transferring of An Established Business to a Corporation."†

After the foregoing steps have been taken, and the minutes of the various meetings written up in the Corporate Record Book, the ordinary business cor-

*Appendix, page 209. †Page 69.

poration is in existence, fully organized and ready for the transaction of any business for which it was incorporated.

The question of "how to create the corporate entity before the principal capital becomes interested" frequently arises. Particularly is this so where the incorporators have a limited amount of capital, or the corporation is being created for the purpose of taking over a business already established, or for reorganization purposes, and the details of such undertaking have not been entirely settled. In such a case it is possible to accomplish the object, and fully comply with the law requiring 50 percent of the capital stock to be paid in before complete organization, etc., by first incorporating with a nominal capitalization, and afterward raising the capital stock to the amount originally contemplated or desired.

The Corporation Laws of the various States differ somewhat materially in the *manner* and form of creating a corporation, and it is beyond the scope of this book to undertake to discuss the *details* of the various acts; the formalities required for their compliance must necessarily be entrusted to those familiar with such laws as they exist at the time of organization; but the essential *practical* features of the organization of business corporations are much the same everywhere, and they are discussed under the various headings herein.

Where to Organize.

Like most questions of procedure, this is one depending largely upon the circumstances of each individual case. There are no general rules which can be applied when the *ultimate success* of the enterprise is considered.

So far as the most favorable laws are concerned, that is always subordinate to the more important questions of business policy. For instance, one State may offer inducements in the way of reduced incorportion fees and enlarged privileges—in short, a more favorable franchise; but when this is compared with the other objects sought to be accomplished, it is of little importance to the organizer.

Many a corporation has been handicapped by making the fatal mistake in organizing under the laws of some foreign State. Usually companies with ulterior objects seek domicile in a State offering the greatest latitude for their purposes—this fact being so notorious that it is *prima facie* a reflection upon legitimate undertakings to go away from "home" for the purpose of organization. However, this reflection may be removed by explanation, when the peculiar circumstances of the particular case *justify* the selection of a foreign State for incorporation, as they frequently do.

New Jersey, Maine and Delaware have gone a long way toward encouraging corporations to organize in

their respective States; North and South Dakota and Arizona have attempted to do likewise, and the laws of all these States have their peculiar advantages, particularly over those of some of the other States where corporations would naturally desire to locate on account of the business advantages offered.

It will be found that in the States where business is most centralized, and where the actual business of most business corporations is transacted, the laws are more or less stringent, and some are unreasonable and obsolete; but, in some of these last-mentioned States the intention at least is to protect stockholders and creditors, and for the legitimate, well-meaning enterprise it is often best to submit to these conditions and organize at home.

Particularly is this true where outside capital is to be interested. Prospective investors, as a rule, invest their money under the advice of legal counsel, and local attorneys are naturally more familiar with the laws and decisions of the courts thereabout, in their own State, and can advise their clients more readily and securely; and in addition to this fact, the investing clients themselves feel more secure in their rights when the corporation is organized under the local State laws.

The State of West Virginia was the first to offer inducements to foreign corporations in the way of

reduced incorporation fees and enlarged powers and limited liability. A large number of the modern combination organizations were attracted to that State on that account, but after organizing there, the Legislature changed the laws, and it was otherwise deemed necessary to leave the State and incorporate elsewhere, particularly in New Jersey.

It must be borne in mind that in nearly all of the States the right to change the General Incorporation Act is reserved by the Legislature, and the advantages offered may be diminished or repealed at any time, and the privileges of the corporation curtailed.

In addition to this possible objection, most States have recognized the fact that their local capital have sought other States for the purpose of organization only to evade the payment of the local incorporation fees, and to otherwise evade the provisions of the laws of the respective States where such corporations in fact intend to operate. To protect themselves, special acts have been passed by most of the States, similar to that now in force in Illinois, which defeats nearly all of the advantages heretofore obtained by organizing in any of the foreign jurisdictions.

The present act of Illinois relating to "Foreign Corporations" is given verbatim in the Appendix;* and most of the States have the same or a very simi-

*Appendix, page 258.

lar statute for the regulation of foreign corporations.

For the convenience of prospective incorporators, a synopsis of the Corporation Laws of the States of New Jersey, Delaware, Maine and South Dakota will also be found in the Appendix,† which shows the special powers, statutory fees and other information desirable for a preliminary understanding and consideration of the questions to be taken into account when selecting a State in which to organize.

The various statutes of those States deemed most favorable, and above referred to, have numerous minor provisions, presumably for the protection of stockholders and the public generally, which often serve to furnish dissatisfied stockholders with the means of annoying and otherwise interfering with the business of a corporation organized in a foreign jurisdiction.

It will be seen, by reference to these statutes, that the objects to be obtained, and suggested here, must be taken into consideration, first in this as well as in other questions relating to the organization of a business corporation; and the important question to decide is always, What effect will the organization of the particular corporation under the laws of a foreign State have upon its business success?

† Appendix, page 247.

Whenever the laws, conditions, purposes or plans justify the decision to incorporate in a state other than that in which the parties in interest reside, or where the principal operations are to be conducted, it is of first importance that a proper statutory agent or local representative be chosen to represent the new corporation, both to bring it into existence, and thereafter in qualifying under the laws of the state relating to domicile, such as maintaining a statutory office, acting as local resident agent, director or officer—as the laws may require—for the acceptance of service of legal process, the keeping of certain corporate books or records, etc., all of which require reliable, competent and *permanent* attention in order that such new corporation may not suffer loss through unknown, or unnecessary litigation, statutory fines, etc.

Similar important services are necessary when any corporation attempts to comply with the various "Foreign Corporation Acts" by establishing local branches in states foreign to that of their creation; and here as before the questions of reliability, experience, facilities to serve, and permanency (rather than economy) should control in the selection of a representative for the conduct of such foreign affairs.

CORPORATE FINANCING

CHAPTER II.

CORPORATE FINANCING.

Capital, Bonds and Stocks.

The questions of finance are among the most difficult—if not the most important—with which the organizer of a business corporation has to deal, and like other questions of business policy, they are necessarily governed by the circumstances of the undertaking in hand.

It is necessary for a correct understanding of the questions of corporate finance that the distinction between the terms *capital stock, shares* of *stock* and *capital* be understood. At the same time, an understanding of the nature and peculiar characteristics of *stock* as property is essential.

The difference between the *capital stock* and *capital* of a corporation is, that the former constitutes the amount divided into shares or parts at which the incorporators have limited the issuance of stock—in other words, the amount upon which calls may be made

upon the stockholders and dividends paid; while the *capital* of a corporation is the proceeds of the sale of this capital stock, and, in addition thereto, all money or property of the corporation acquired from any and all lawful sources. The former amount remains the same until changed by consent of the State, while the latter may vary according to the success of the enterprise.

The term *shares of stock* means the several parts into which the capital stock is divided, *e. g.,* if the capital stock of a corporation is $100,000, and the denomination of the shares is fixed at $100 each, a share of stock represents one one-thousandth part of the property of the corporation. Then these shares of stock are *represented* by stock certificates, which may be made out to represent one, or any number of shares of the capital stock, according to the will of the makers of the certificate.

The proceeds of the sale of the capital stock—the capital—belongs to the corporation, and the owners of such capital stock have no right to withdraw any part of such proceeds after it is once paid into the treasury; and this is the law, even if all the capital stock is owned and held by one individual. As heretofore stated, the corporation is a *legal entity*—a person in the eyes of the law—and the stockholders, directors and officers combined do not constitute the

corporation. A stockholder, by reason of his owning stock in a corporation, does not thereby acquire title or right to the profits or surplus of a corporation, until the same has been formally and legally "declared" by the Board of Directors and formally set apart for the stockholders; at the same time, a stockholder has no title or individual interest in, or rights to, the property of a corporation until a dissolution takes place. He cannot even acquire a good title to the property of a corporation by purchasing all of its stock and then abandoning the corporate existence.

There are but two general classes of stock in a business corporation which need be here referred to, namely, *common* and *preferred.* Many American writers on Corporation Law give other classifications, such as *"watered stock," "deferred stock," "special stock"* and *"over-issued stock,"* but they all fall within the above classification, or are of no importance in this connection, except to understand the meaning of the terms employed.

"Watered stock" means simply stock that has been issued and not paid for, in money or money's worth, to the extent of the face value of the stock issued; "deferred stock" is in reality a bond under another name; "over-issued stock"—as its name implies—is stock that is issued in excess of that authorized by law, or for which the corporation was originally cap-

italized; and the term "special stock" is a class of corporate property unknown in any other State but Massachusetts, where it is created and authorized by the laws of the State.

Common stock is a general interest in common in the property of a corporation. It is, like all other stock, divided into parts or shares which represent a certain proportionate part of the whole. This class of stock confers equal rights and privileges among all its owners, such as the right to share in the profits of the business; to vote for directors; and upon a dissolution of the corporation, to share equally with all other stockholders, in the division of the assets, etc.

Preferred stock is a special interest and contract combined whereby the corporation agrees to pay its owners a certain specified dividend *out of the net profits* of the business in advance and in preference to the common stockholders.

It may not be amiss to here refer to some of the important differences between *preferred* and *common* stock. The former provides for a guaranteed dividend out of the net profits, usually the customary rate of interest of the State where the corporation is organized. Such dividends can be made cumulative or non-cumulative; that is, should the net profits for any one year be insufficient to pay the dividend named, any unpaid portion of such dividend shall be made

up and paid out of the profits of any subsequent year, before dividends can be applied to the common stock, or any other class.

Common stock has no guaranty of dividends, even if there should be net profits, but is entitled to all of the earnings of the company after the dividend is paid on the preferred stock; and unless the conditions of the preferred stock are such as to prevent, it will prorate with the common stock in all dividends that may be earned and declared, after the dividend has been paid on the preferred stock, and an equal amount paid to the holders of the common stock.

The conditions upon which preferred stock is issued govern all the rights of its holders, and constitute a contract between the corporation and the holder; and in the absence of a condition to the contrary, preferred stockholders may vote and exercise all the rights of the holders of the common stock.

Some of the State statutes do not provide for the issuing of preferred stock, but it has been repeatedly held that such stock may, nevertheless, be issued if it is provided for at the time of organization; and such preferred stock may also be issued at any time thereafter, with the consent of the holders of all the common stock of the corporation.

A Stock Certificate is not necessary to the ownership of stock in a corporation. It is merely *evidence*

of the ownership; the stock exists independently of the certificate itself.

Shares of stock are a peculiar species of property. They are intangible, and resemble what is termed in law a *chose in action*—that is, a right or claim which can be reduced to writing and enforced in a court of law.

Shares of stock are, in the absence of a statute expressly authorizing the same, not subject to levy and sale upon execution, like other personal property; however, most of the States have enacted laws whereby such levy may be made. It is necessary to get personal service on the owner of stock, or to get physical possession of the certificate representing it; and it has been decided that attempting to levy on the stock of an individual through the corporation is ineffectual, which demonstrates the principle above stated that this species of property is somewhat peculiar, and differs from a claim for money or property, in that particular at least.

Then, in addition, shares of stock possess many features of negotiability. For instance, by simply indorsing the certificate in blank, stock may be transferred from one individual to another by delivery of the certificate, and the right to insert the name of any intermediate or ultimate owner, and to have the stock transferred to such owner upon the books of the com-

pany, passes with the certificate indorsed in that way—which enables the possessor of this species of property to readily use the same as security for financial accommodation.

Bonds are formal obligations executed by a corporation and usually secured by trust deed upon the plant or assets of the company. They are ordinarily issued in denominations of a size that will enable the corporation to negotiate a large loan among a number of investors, and to secure alike any number of holders of such obligations.

The terms of payment and security of bonds are wholly dependent upon the will of the corporation creating them. The usual object of issuing this form of obligation is to obtain what is termed a "permanent loan," or financial accommodation for a long time, and upon a low rate of interest, in order that the same may be used for the advancement of the business, and to be repaid out of the profits of the enterprise.

It is customary to make such obligations payable to the bearer; and when this is done, they are susceptible of being transmitted from one person to another without formality of any kind. The law presumes ownership with their possession, when made in that way.

The conditions of a trust deed made to secure such bonds, as well as the terms of the bonds themselves,

may be made to facilitate or hinder their sale; consequently great care is necessary in the preparation of both.

Bonds may be drawn so as to be convertible into stock, at the option of the holder, and in this way facilitate their sale, by enabling the owner to practically invest in the enterprise, and in case of success, to convert his bond holdings into stock. And on the other hand, if the venture proves less profitable as an investment than the interest guaranteed by the bonds, the holder is secured, and can ultimately recover his investment, with interest.

Bonds may also be issued in lieu of dividends. By so doing, the amount of the dividend may be retained in the business for development purposes, and the stockholders will have received what is equivalent to the dividend as well.

The foregoing simply explains the latitude and some of the advantages afforded the creator of bonds and stocks. The terms that may be incorporated in stock certificates and industrial bonds are always a subject of contract between the corporation and the purchaser; such terms are limited only by general rules of law and business expediency.

The term *debenture* is often used interchangeably with, or substituted for, the word bond. While the meaning of the term *debenture* is, strictly speaking,

the evidence of an existing debt, it may be a simple debt, and unsecured; but common usage has established many qualifications to the word bond, and they are approved in the world of finance, and their meaning and significance understood.

Capitalization of Corporations.

It is comparatively a simple matter to determine the questions relating to capitalization where the number of parties in interest are few, or in a case where the business to be capitalized is what is termed a "close corporation." In such cases the objects to be accomplished are usually confined to the conduct of a single business venture for the benefit of a limited number of persons, and the questions that arise under other, and ordinary circumstances, are absent. It is, therefore, unnecessary to discuss the capitalization of such a corporation as is here alluded to, for it is presumed that no outside assistance or interest will be desired.

It is where the rights of the parties are to be considered at the time of organization—in order that they may be protected under present conditions and future business developments, and that the needs of a business may be provided for at the time of organization, as well as in the future—that this subject requires special attention.

A business with a good foundation and prospects may be greatly handicapped, and its opportunities for successful promotion be "killed," by over-capitalization. For example, A had a valuable patented device that was, in itself, the foundation for a successful business venture. He formed a corporation and capitalized it at $2,000,000, when as a matter of fact, $100,000 was all the working capital which was necessary for the successful conduct of the business.

By manipulations, hereinafter more fully explained, the business was so arranged as to offer this stock at a ridiculous figure (below par, of course), with the result that after disposing of a certain amount of this stock—enough to get the business thoroughly entangled, and to demonstrate that such a plan was not feasible, and that sufficient money could not be raised thereby to exploit the device and promote the business—it became necessary to reorganize the company, and to *re-capitalize* it at a reasonable amount, before the business could be financed sufficiently to demonstrate the earning capacity of the device.

Numerous other cases illustrating the principle above set forth could be given, but they are of such frequent occurrence as to be familiar to everyone who has had experience in business organization.

At the same time, the capitalization of a business corporation at an amount less than the immediate or

future prospective requirements of the business will admit, may, and usually does, furnish an occasion for reorganization. What may be considered sufficient capital for present needs may prove wholly inadequate after the business has been developed, and unless this contingency has been taken into account at the time of organization the providing of additional capital is always a difficult question; for the rights of the stockholders will have accrued in the meantime, and their consent to such an object may be necessary and difficult to obtain.

Under the laws of Illinois (and most other States) it is necessary to obtain the consent of stockholders owning two-thirds of the capital stock before an increase of the same can be legally accomplished; and unless the amount of capitalization at the time of organization is sufficient to provide for the future needs of a business the absence of this consent may defeat the raising of such needed capital, in that way.

There is, of course, no arbitrary or settled rule for fixing the amount of capitalization of a business corporation, but the effectual and conservative rule usually adopted for the guidance of incorporators is that the demonstrated or reasonably prospective *earning capacity* of a business should control in fixing the amount. If the question arises in the reorganization of a going business, its past record and reasonable

future prospects based thereon, are legitimate subjects for consideration and guidance in fixing the capitalization. As an illustration: Where a business has shown a net profit of 15% on the capital employed, it would not be out of proportion to capitalize a corporation, which was to operate such a business in the future, at three times the amount formerly invested therein. On the other hand, if the proposition under consideration is a wholly new business venture, its present and conservatively estimated future prospects should form the basis of capitalization; and these prospects may be arrived at by various methods usually known to those experienced in the particular line of business under consideration.

There are usually but two important considerations in fixing the capitalization of a corporation, and they are, *first,* to enable the company to obtain working capital; and *second,* to protect the rights of the present parties in interest. In accomplishing the former, due regard should be entertained for the opinions and judgment of those who may be invited to invest in the undertaking.

The *manner* of capitalizing a corporation, that is in fixing the classification of stock to be issued—whether preferred or common, or both—is also important, and this should be done at the time of organization, as far as possible, for reasons already alluded to.

In the reorganization of a corporation or business it is frequently desirable that the former owners of the business should continue to be interested in the enterprise, by accepting stocks or bonds, or both, in payment for their interest conveyed to the corporation. This may be accomplished by issuing preferred stock to cover all the interest of such persons, or to issue bonds to cover the conservative value of the tangible property, and common stock in payment of the Good Will and other intangible assets conveyed. If, on the other hand, it is the desire of those interested to ultimately dispose of their holdings entirely (in other words, to incorporate for the purpose of disposing of their business), this may be accomplished through the bond issue, or by the issuing of preferred stock which is *preferred as to the assets as well as to profits;* for they are both more likely to find a ready sale than common stock, particularly while the enterprise is in its infancy.

The question of whether the interest conveyed shall be paid in preferred stock or bonds is simply one of expediency; in either event, the party interested is protected. The principal and controlling difference between preferred stock (such as is here suggested) and bonds secured by a trust deed on the plant of an established business, is that the bonds secure the holder ahead of subsequent *creditors* and guarantee

the payment of a certain rate of interest, while the preferred stock does not insure a dividend unless it is earned, and is not a lien on the assets; and with these differences, they may be considered as of equal value and security. If the business management and conditions justify the accepting of preferred stock of this character, it is frequently desirable to do so in preference to issuing bonds; for with such preferred stock there is no indebtedness against the business to injure its credit and prospects, which would be the case if a bond issue was adopted.

The capitalization of a new venture without a nucleus or established business as a basis, and where the organizers depend upon the sale of stock for working capital, presents more difficulties.

Ordinarily, there are a number of persons interested in such undertaking at the time of organization who propose to contribute a certain amount toward its promotion and establishment but expect to raise the majority of the capital by the sale of stock.

Where such a condition exists, it is advisable to have both preferred and common stock, the proportion of which must depend upon the circumstances of the particular case in hand. An approved and demonstrated plan, however, is to have the stock divided equally; that is, one-half preferred and one-half common, and to capitalize the corporation at an amount

sufficient to make the proceeds from the sale of the preferred stock furnish the immediate working capital, and to leave the common stock for sale for future development purposes, after its earning capacity has been demonstrated; or if it is feasible to do so, have the preferred stock cumulative as to dividends, and preferred as to assets, and to sell as near as possible an equal proportion of each class of stock at the outset. In this way, the investor is insured a dividend on one-half his investment, if the business earns enough to pay it; and in the event of a dissolution or failure, he would be protected ahead of common stockholders in the same proportion. Then enough of this preferred stock would be retained to aid the sale of the common stock, should the business require it.

There are numbers of circumstances which permit of the issuing of all common stock, particularly among the smaller undertakings, and of course this is to be recommended whenever the conditions will justify such a course—that is, when the capital necessary for the needs of the business can be as readily obtained in that way.

After the amount and manner of capitalization of a business corporation has been determined there still remain for consideration the terms and manner of payment of the stock sold or subscribed for.

The statutes of most of the States provide for a

certain minimum amount with which a corporation may begin business, and this, of course, must be paid in at the time of organization. In the absence of a statute to the contrary, the payment for all stock in a corporation is a fit subject of contract (as between the subscriber and corporation), and in the absence of any contract such payment is subject to call of the Board of Directors.

In a case where it is necessary to sell stock to be paid for in installments, or to sell stock in small blocks or installments, the approved method for accomplishing this purpose is to issue an "installment certificate" or contract for the ultimate delivery of the regular stock certificate upon complete payment, or when a certain number of shares shall have been paid for, etc. Where it is necessary to adopt such methods for the raising of capital, it is usually advisable to issue such contracts in lieu of stock, and to have their terms provide for the delivery of the regular stock certificates upon a certain specified date, far enough in the future to insure the sale of all stock which it is contemplated will be sold, or which it is deemed necessary to sell, in that way. For, if the regular stock certificates are delivered as the stock is sold, circumstances may make it necessary or profitable for the purchasers to dispose of some or all of their stock before the company's unissued stock is sold, and in this way create

a competition between such stockholders and the corporation, and, in consequence, demoralize the market and hinder the sale of the balance of the company's stock.

Such a certificate as is here alluded to must be drawn with special reference to each particular state of facts. An approved general form illustrating the application of the plan here referred to will be found in the Appendix.*

Recurring to the subject of bonds: Their terms and conditions, and the terms and conditions of the trust deed made for their security, are matters of importance from a practical standpoint, both to the corporation issuing them and to the prospective purchaser in the open market.

While it is necessary that these provisions should be all that is reasonably required for the protection of the investor, care should be exercised in making their terms to suit the convenience and possible contingencies of the business of the corporation; as an example, in the terms of their payment it may be provided that any of a certain series of bonds may be retired by the corporation upon giving reasonable notice to that effect upon any annual interest day, and by paying a certain reasonable amount for the privilege, in the shape of advance interest. In addition, the de-

*Appendix, page 214.

nomination and time of payment should be considered. If it is desired to sell such bonds in a private way, or in a locality wherein the persons interested are known, the making of small denominations may greatly facilitate their sale among small investors; and the time of payment should be placed at a conservative distance in the future to insure the ability of the company to repay the principal when due.

It is often advisable and necessary that the stocks and bonds of a corporation should be listed with the local Stock Exchange, in order that they may have a market among investors in securities, who naturally look to such a source for information concerning the value and regularity of the issue offered for sale.

Such Exchanges have rules for the protection of their members and the public which must be complied with; a copy of that portion of the By-Laws of the Chicago Stock Exchange is given in the Appendix,* and the conditions there imposed are similar in all respects to those of such Exchanges in other cities.

Raising of Additional Capital.

If the corporation is legally formed with due consideration for its possible future developments and financial needs, and the business has been legitimately and success-

* Page 245.

fully conducted, and its books and records accurately and systematically kept, the question of raising additional capital is comparatively a simple one, and its acquirement is based primarily upon the financial responsibility and business prospects of such an enterprise.

Conditions that influence sales of stocks and bonds are often created at the time of the organization of the corporation creating them. It is when some or all of the foregoing features are lacking that difficulties are encountered and failures occur, where the business itself would otherwise justify a different result. And, it might be added, that the majority of failures are, in some measure at least, due to the fact that the proper attention has not been given to some practical question concerning the organization, or other essential matters, at the inception of the undertaking.

When the corporation is confronted with embarrassing questions of finance, the defects, if any, in its formation or subsequent conduct "stand out in bold relief," and often make it quite impossible to accomplish the result desired, without a reorganization.*

Capital is a power well known to the average possessor, and it is necessary to take this fact into consideration when it is sought after; then, the viewpoint of the man with money must also be taken into account.

*See "Reorganization," page 115.

While there are many selfish and grasping persons, the average business man looking for a business opportunity is fair and reasonable from his point of view; and if that can be ascertained, and his requirements fulfilled, the matter of interesting him in a business is simplified.

The business corporations which are ordinarily seeking capital might properly be included within the following three general classifications, and they will therefore be here adopted, and considered in their order, namely:

First: The new undertaking which has passed through the experimental period (which is usually the first year), and finds itself without sufficient capital to accomplish the original objects.

Second: The established business which has been built up by a firm or individual, and transferred to a corporation, but for some reason the capital at its disposal proves insufficient.

Third: The business with visionary plans, and whose objects are impractical, desiring to obtain capital for its conduct or continued operation.

In considering the first class of enterprises named it will be assumed that all necessary and proper steps have been taken in the organization, and that the business itself is of recognized merit. It is also here assumed that no mistakes had been made, either in

the domicil, amount of capitalization, or other practical features, and also, that the business itself shows a fair and reasonable prospect for ultimate success.

In this case, as in all others, the particular circumstances must govern; but generally the *increasing* of the capital stock of such a company is the most satisfactory method to acquire additional capital, particularly from a financial standpoint. Of course, the sale of such stock is necessary, and if the business will admit of additional executive assistance, the inducement to an investor of filling an office of responsibility—with reasonable compensation—is always a great help and an important element in effecting such a sale.

The sale of a large issue of stock is always difficult, unless the corporation is well known, in the hands of recognized dealers in the line of business, or its stock is listed on the local Stock Exchange.

The issuance of bonds or preferred stock with a common stock *bonus,* is always to be discouraged from a business standpoint, if from no other; and the conservative man of money is rarely, if ever, influenced thereby.

Many of the questions here presented have been already considered in determining the capitalization of a new corporation—under the preceding heading—and therefore need not be repeated; the general principles there announced will be found useful in the solu-

tion of questions of finance whenever a business falling within this classification requires financial assistance.

The next class of business corporations seeking capital, and referred to above, are not as numerous as the first. For, assuming that no mistakes have been made in the essential features of reorganization and that the business is established, little difficulty should be met in raising any reasonable amount of necessary capital consistent with the security to be given.

Here we are also confronted with the peculiar, important circumstances which surround every case of this character. Generally such a business has assets of a permanent nature—often a plant which would readily be accepted as ample security for a bond issue sufficient to provide the necessary working capital; and where this can be done to advantage, it is well to be considered, as such bonds usually are salable at par, and bear a low rate of interest and can be made to mature far enough in the future to make such a plan advisable from every standpoint.

Then the question of changing location is to be considered here, as it is in the class of companies first above named; numerous outlying towns and localities desire additional manufacturing industries, and they are frequently prepared to provide locations and financial assistance, either in the form of a bonus, or by subscribing for a certain amount of additional

capital stock. These opportunties may be investigated, and reliable information obtained by consulting the Industrial Agents of the various railroads, whose business it is to give assistance in such matters, both to the industry seeking a location and to the town in procuring the enterprise desired.

The third class of enterprises named comprise the majority of the seekers after capital, and this fact alone makes it more difficult for the legitimate and worthy enterprises to secure such assistance.

Manifestly, the greatest benefit to all persons interested in such a company would be to wind up its affairs as speedily and economically as possible; but it is safe to predict that few readers of this book will ever concede that their undertakings or business ventures fall within the lines here drawn.

It is surprising, however, to know the large percentage of enterprises struggling to keep alive and going which in reality may be fairly considered within this class.

It is not infrequent, however, for the lawyer to be called upon to scrutinize the affairs of such enterprises, and he should be qualified and ready to advise his client, not alone upon the legal status of affairs but upon the general aspect of the business and its prospects. This he may do by simply investigating along lines that are well defined and demonstrated by ex-

perience. For instance, a company that to all intents and purposes has "stock-jobbing"* for its principal object should be avoided and condemned; a company organized for the purpose of conducting some speculative venture at a great distance is suspicious; a business with vast natural resources wanting "a small amount of money for development purposes," which should readily be obtained upon the company's alleged assets, is usually a fraud; the company that has been incorporated without an established business for a nucleus, and is dependent upon the sale of its stock for working capital, and which has sold a portion of its stock to a number of small investors, the proceeds received from such sale being insufficient to demonstrate the success of the business contemplated, or to materially advance it beyond the organization or experimental period, is, *as a rule,* of doubtful prospects —and so on.

In fact the earmarks of unworthiness are as apparent in a business enterprise as elsewhere, and are discernible by proper investigation, and knowledge of the affairs investigated.

No one is justified in undertaking a business venture without at least the moderate capital usually required to carry it on (or the means of raising such capital), and trusting to financial accommodations and credit

*See "Stock-Jobbing," page 129.

for success. It is undoubtedly true that no one who has tried to establish a business without a suitable capital, even if he has succeeded, would advise another to attempt to do likewise; for it involves an amount of anxiety, labor, embarrassment and hazard which is unpleasant to reflect upon. To do business altogether on credit requires a fortunate combination of circumstances to make it successful that no prudent man would predict.

It might be said with propriety that the universal law of trade is that the enterprise which attempts to conduct its business upon borrowed capital alone must sooner or later fail—that is, where the company attempts to conduct its business upon financial accommodations secured from regular sources, such as banking houses, brokers, etc., upon trade paper. At the same time, a company may do a large *increased* volume of business upon such accommodations; in fact, a large Chicago corporation practically conducts the principal volume of its business upon funds secured in that way, and loans its own capital through banking and regular financial channels, upon a higher rate of interest than it is required to pay for its own accommodation. But it is not such a corporation as the ordinary business enterprise could safely imitate; its securities or trade paper could be converted into

money at any time and under any circumstances, without difficulty.

There is a tendency among aggressive business men to "mortgage the future," so to speak, and this without regard to repayment. The securing of judicious, long-time loans upon a bond issue where the business requires additional capital, is not alone a saving in the rate of interest but renders the undertaking less hazardous, and more convenient and certain of payment out of the profits that may be safely estimated; besides, the bonds of a staple business concern, with tangible assets, are invariably in good favor with investors. The practical questions concerning the issuing of such bonds and preferred stock as well, have already been considered.*

In regard to the extent to which the credit of a business enterprise may safely be extended—that is, the proportion which the capital of an enterprise should bear to its liabilities—necessarily varies with conditions. It has been stated, however, by eminent and experienced financiers that a man should not extend his business more than three times the amount of his capital under the most favorable circumstances, and if it be a large business, not more than twice his capital.

We have already alluded to what has proven to be

*See "Capital, Bonds and Stocks," also "Capitalization of Corporations."

a very satisfactory method for the raising of additional capital, under ordinary circumstances, and that is by the issuance of bonds, drawing a reasonable rate of interest, that may be convertible into stock within a certain given period, at the option of the holder. This enables the purchaser of such bonds to avail himself of the privilege of becoming a stockholder at any time within the period provided in such bonds, should he so elect, after the business has demonstrated its merit, and the enterprise is thereby provided with the necessary additional capital, which it can repay out of the profits.

Many business men will readily invest in such bonds, with the privilege of changing the form of investment after the business is established, who would not in the first instance purchase stock.

Transferring of An Established Business to a Corporation.

The topic of this section has furnished the material for much of the unfavorable criticism which has been made upon the corporate plan and abuses of the corporate system; and this is made the subject of a separate discussion under appropriate headings.* At the same time, some

*See "Consolidation of Enterprises" and "Stock-Jobbing."

of the legitimate advantages offered through the consummation of transactions of this character have already been pointed out.†

In the preceding pages we have necessarily discussed many of the important questions pertaining to, and which invariably arise in the transferring of an established business to a corporation. Those heretofore discussed have had to do with the advance financial arrangements and objects to be accomplished rather than to the subsequent rights of the parties to be protected. In the following pages particular attention is given to the substantial benefits to be derived from the corporate plan of conducting business, as well as the rights of the parties interested therein.

It is through transactions of this character that advantages are obtained by the owners of a business, such as the preservation of the good will, facilitating the sale of a part or the whole of the business, and the obtaining of an advantageous price for the business transferred, etc.

The opportunity last referred to is frequently abused; that is, the valuation placed upon a business about to be transferred to a corporation is inflated, and the question frequently occurs "to what extent may a business or property be over-valued without rendering the parties in interest liable therefor?"

†See "The Corporation and Its Advantages."

This question has been the subject of much litigation, and different courts have taken different views thereon. Without attempting to enumerate the rules announced in the various decisions, the most favored rule, and the one to be everywhere regarded as safe, reliable and sound, is that if the directors act in *good faith,* and the property transferred has a substantial value, and there is no fraud connected with the transfer, their valuation is final, even if excessive.

A different rule, however, obtains in some of the States, where the statutes make the action of the Board of Directors in relation to such matters final in any event. This rule obtains in Delaware, Maine, New Jersey and New York; and in some States, where mines and mining is the chief subject of corporate organizations, this rule is recognized either by statute or by the courts to encourage development of the mining industry.

More latitude is everywhere allowed in the valuation of what are known as speculative assets than where the property is staple and easily valued; and in every case the question of what the property is worth *to the corporation,* rather than what it is worth to the individuals selling, will govern.

A business that has been established by an individual or an association of individuals under a firm name, usually possesses a valuable property right in the

name itself—which is in reality the subject-matter of the good will. While the good will of a firm, or individual doing business alone, may be the subject of transfer and sale, and therefore valued and conveyed, still it is never possible to utilize and protect this form of property, or obtain its full value, except by transferring the same to a corporation. The reason of this is that while the trade name may be thoroughly established and the means of influencing trade, it is, in a measure, perishable, and loses much of its value once the individuals who have created it are known to be no longer its owners; while if it is transferred to a corporation organized by the same persons who established the name, it becomes permanently associated with the corporation and with the other advantages that accrue to the trade name of a corporation (that are not possible to an individual) it thereby derives a permanency and utility that cannot be lost.

It is these and other considerations which justify the adequate valuation of the immaterial assets of a firm or co-partnership when transferring the same to a corporation for the ultimate purpose of effecting an advantageous sale—enlargement or permanent establishment of a business.

There is much of the "personal relation" existing between the proprietor of a business conducted by an individual or co-partnership and the patrons thereof

that has its advantages, and in some degree at least —and in certain forms of enterprises—may argue in favor of the personal as against the impersonal, *i. e.*, corporation relation; but the details of the business of a corporation can and *should* be so organized as to overcome this objection—that is, by creating personal responsibility, if not a personal interest, for department heads in the various important departments of the corporation, and in that way retain the personal interest and responsibility so essential to the welfare of every business conducted upon the competitive system.

As to the approved manner of transferring assets of an established business to a corporation for money, bonds or in payment for its stock: If the business is to be valued and purchased from an inventory, where the property conveyed is itemized, the resolution of the Board of Directors taking over or purchasing such property should recite that the property had been itemized and valued at the *aggregate sum* of whatever is to be paid for the business conveyed; and the inventory may, with propriety, be copied and made a part of the bill of sale. If, on the other hand, the business is purchased in bulk—or the amount of property estimated—then the resolution of the Board should recite that the property had been appraised in bulk and val-

ued by the Directors at the total amount to be paid therefor.

It is essential that all due formality should be observed in the purchase and transfer of assets to a corporation in payment for its stock or otherwise, and where it is feasible, the proposition to sell should be made to the corporation by formal writing. This will enable the officers to make proper investigation of the business offered, and at the same time the written proposition will form the basis of an appropriate resolution of purchase and a complete contract of sale when accepted.

If there is real estate involved in the transfer, naturally the title will be carefully examined by competent legal counsel, before passing upon the proposition to purchase; and in such cases the resolution should recite that such examination had been made and the title found merchantable or otherwise, and that the proper conveyance or title deed had been executed by the owner or owners and tendered to the corporation at the time of the proposed formal acceptance of the offer by the Board of Directors.

In the Appendix hereto, will be found a general form of resolution which, according to the facts there assumed, purports to purchase and take over—through the commissioners appointed by the Secretary of State

of Illinois—from a corporation that is in the process of reorganization, an established business in payment for stock subscribed for by the reorganizer mentioned in the Reorganization Certificate shown.* The resolution there given will suggest the method, and also the form of resolution applicable for the purchase of any established business by a corporation except that in the case there assumed no written proposition was made or necessary, on account of the fact that the purchasing company was incorporated for the express purpose of operating the business purchased, and the directors are assumed to be all the stockholders as well, and all present and acquiesce in the terms of purchase and sale. In such a case, the peculiar facts there assumed (for the purpose of illustrating an approved plan of effecting a reorganization which will be further explained under a subsequent heading), dispense with such written proposition.

In every case where a business is transferred from one or more of the directors, or parties in interest, to the corporation, it is always advisable to have the formal consent of the stockholders to such a purchase; and this may be done by convening a special meeting of the stockholders for that purpose, and submitting the question of purchase to a vote, and having the

*See form, page 206.

action of the stockholders in that regard, a matter of record. Such a resolution would simply recite the facts, and *authorize* and *direct* the Board of Directors to consummate the transaction and purchase the business at a given price, or at the best price obtainable. And, it might be added, that the consent of the stockholders to the acquiring of a separate business, or to the transaction of any *unusual* important business, is always to be recommended. Particularly is this advisable where the stockholders are few, or the corporation small.

CORPORATE MANAGEMENT

CHAPTER III.

CORPORATE MANAGEMENT.

DIRECTORS, OFFICERS—THEIR DUTIES AND LIABILITIES.
STOCKHOLDERS' RIGHTS AND LIABILITIES.
BY-LAWS AND THEIR USES.
CORPORATE RECORDS AND BOOKS OF ACCOUNT.
EXAMINATION OF BOOKS AND RECORDS.

Directors and Officers. Their Duties and Liabilities.

The duties and liabilities of a director of a business corporation are co-extensive—that is, his powers and authority on the one hand are of such a nature that they lead to a corresponding responsibility both to the corporation and its creditors. As has been heretofore shown, the authority to bind the corporation emanates from the Board of Directors; and in consequence, the officers are responsible to them. The officers are chosen by the Board of Directors, and, unless restricted by the by-laws, they may be removed by the Board for sufficient cause; and if the by-laws so provide, any officer may be removed at the pleasure of the Board.

Directors cannot, however, act individually; they must do so as a body. That is, no legislation on be-

half of the corporation can be enacted except by the Board in meeting assembled, and the will of the Board when thus indicated, is to be carried into effect by the officers of the corporation.

The peculiar characteristics of a corporation often renders notice to a director or officer also notice to the corporation; and this is important in relation to the conduct of all corporate business; such notice simply means *information.*

In order to charge a corporation with such notice, however, the directors or officers must be shown to be acting for the corporation at the time the notice is received, and also that the employment of the director or officer concerns the subject-matter of the notice; in other words, the director or officer must be then engaged for the corporation in such a way as to render the notice appropriate to his office or employment.

Notice to a Board of Directors *while assembled,* and such notice to one of them, who afterward communicates the same *to the Board* in *session,* is sufficient notice to the corporation in any event.

Under the common law, directors are liable for issuing stock as fully paid, when in fact the same is not so. They are also liable for the payment of dividends out of the capital stock of the company, and for any *ultra vires* acts and fraud generally, as well as for

negligence which results in a loss to the corporation. In other words, they are responsible for many acts of omission, as well as commission.

Under the statutes of the various States they have a further liability imposed, whereby they are held to the responsibility of a trustee under certain circumstances. They are always trustees for the creditors of a corporation, and also in certain dealings in relation to the property of it. The question of their dealing directly with the corporation is frequently the subject of litigation, and they are invariably held to a strict rule of conduct in such matters.

A business corporation has no power or authority to loan money; hence it could not lawfully do so to a director. And the rule that one cannot properly occupy the dual position of buyer and seller is particularly applicable to directors of such companies—to the extent that any secret advantage thus acquired may be recovered from such directors. At the same time, they may not abuse any information acquired as a director, or obtain secret advantages therefrom to the detriment of the company.

A safe rule for the director to adopt is to act in all things pertaining to his office and the company of which he is such a director in the same way as he would act if the business transacted for the corporation was his own exclusively.

A director is not disqualified to act in any official capacity for his corporation on account of his being a director. In fact, it is usual for directors to be also the officers of the corporation. Particularly is this true in small or medium-sized companies.

It is always necessary that there should be a President and Secretary in every business corporation, and it is usual and necessary under the laws of some States (*e. g.,* Illinois) to have a Treasurer, as well.

The number of officers that a company may have is only limited by the will of the Board of Directors. It is frequently provided by the by-laws that certain officers of the corporation should also be directors, and this is proper and convenient; for, if they are directors as well as officers, they are at all times conversant with the consensus of opinion of the Board in relation to its policy, and upon all matters pertaining to the business.

The powers and duties of the officers of a corporation depend entirely upon the provisions of the by-laws, and the delegating of such powers, and the classification and the stating of the duties of the various officers is a subject that should receive special attention at the time of the organization of every corporation.

By properly defining the powers and responsibilities of each officer the best possible results are obtained,

and each officer has a certain clearly-defined responsibility; besides, any possibility of controversy over conflicting authority is thereby averted.

The compensation of both directors and officers is a proper question for the directors themselves; it is a proper subject of resolution by the Board of Directors, enacted and recorded on the records of the corporation prior to the performance of the service in question, and unless abused, the action of the directors in this regard is final.

Directors are not entitled to compensation unless it is expressly provided that they shall receive pay for their services; and a salary voted to a director after the services have been performed is voidable by the stockholders. Directors are usually vitally interested in the corporate enterprise, and their election as directors is usually due to that fact. A director who performs extra services, outside of his duties as a director, however, may be entitled to compensation therefor.

The established rule concerning compensation of directors is that authority for its payment must be obtained without fraud, either actual or constructive, and that the amount thereof must be reasonable for the services performed.

A salary paid to directors under certain circumstances, *e. g.,* when the corporation is insolvent or

financially embarrassed, or where the amount is excessive or paid out of the capital of the corporation to the detriment of the stockholders, may be recovered from the directors by an appropriate proceeding.

Another familiar principle concerning compensation of directors and officers alike is that where the salary is authorized by the vote of the party receiving it—that is, if his vote is necessary to its creation—such compensation is illegal. At the same time proper and adequate compensation may be voted directors and officers, and the amount of such compensation must be governed by the circumstances of the particular case.

There is a growing disposition among legislators generally to increase the visitorial power of the State over corporations, and to this end require certain reports to be made by officers periodically concerning their affairs, such as the furnishing of names and addresses of all directors and officers; whether the corporation is availing itself of the privileges conferred by its charter; the amount of the capital stock paid in since its organization, etc., and providing certain penalties and responsibilities for such officers for the failure to comply therewith. In addition to such penalties imposed by the State, an officer may be held liable to the corporation for any injury resulting from his negligence or failure to comply with such laws;

and generally an officer may be held liable to the corporation for all negligence or fraud.

Nearly all the States now have special laws regulating foreign corporations; that is, where corporations organize in one State and undertake to do business in another, in the latter State they are regarded as "foreign corporations." The special acts of the various States in relation to such foreign corporations are far-reaching in their effect, as will be seen upon reference to the copy of such Act now in force in the State of Illinois, given in the Appendix.* It will be observed that in Illinois a foreign corporation is obliged to comply with the act referred to, before doing business in the State. What constitutes "doing business" means the establishment of a local agency or branch for the carrying on of the business; in which event, it is necessary to designate some person upon whom service of process can be had in case of litigation, and to otherwise comply with such act. Upon the failure of such foreign corporations to comply with the terms of such local laws, no contract can be enforced by it in the foreign State; and it has been held in Illinois that subsequent compliance with such provision of the law will not entitle such foreign corporations to enforce a contract that was made prior to such compliance.

* Page 258.

Stockholders' Rights and Liabilities.

The functions of stockholders in a business corporation are limited; the general and principal rights of the stockholder are (a), to form the corporation, or bring it into existence in the first instance; (b) to elect its Board of Directors from time to time; (c) to make its by-laws, unless that power is delegated to the directors; (d) to increase or decrease the capital stock; (e) to authorize all amendments to the charter; (f) to participate in the dividends; (g) to dissolve the corporation; (h) to authorize the giving of mortgages, in case the statutes of the State require it; (i) to examine the books and records of the corporation at all reasonable times; (j) to pass upon the necessity or advisability of the sale of the entire business.

The liabilities of a stockholder are even less than his rights as such. It might be said, if the corporation is regularly and legally formed, that the stockholder's liabilities are limited to the unpaid portion—if any—of the stock held by him; and unless the laws of the State under which the corporation is formed are complied with the stockholders are liable in the same manner and to the same extent as partners.

In some States the stockholder has a liability in addition to the par value of his stock. This liability is imposed by the statutes of such States. Such liability is strictly construed by the courts where the same

exists, and it is now confined to but a few States, and the tendency is to abolish it altogether.

In discussing the liabilities of a stockholder, they will be referred to in the order in which they naturally arise—that is, the liability of an *original* stockholder for any unpaid portion of the stock standing in his name, and in connection therewith, the liability of the transferee of such stock.

Most of the States hold the transferee liable jointly with the original subscriber or owner of stock, where the same has not been fully paid for at the time the stock was issued.

It has been already shown that stock originally issued upon *inadequate consideration, i. e.,* where property has been fraudulently accepted by the directors in exchange for stock, or where the value of the property has been flagrantly inflated, is not thereby paid for, even as between the corporation and the seller, notwithstanding the stock certificate upon its face purports to be "fully paid and non-assessible." In such cases, the transferee is liable *jointly* with the transferor (especially to creditors of the corporation) for the differences between the value of the property received by the corporation and the par value of the stock issued therefor.

Where the statutes of a State do not make the action of the Board of Directors in this regard final in any

event, the above mentioned rule applies to both the original owner of the stock and any subsequent transferee; and the only difficulty in determining the liability of a subsequent stockholder in such a case is to establish sufficient notice to the transferee of unpaid stock, or to determine what circumstances or state of facts will constitute legal notice that the stock accepted by him is not fully paid, when the stock certificate recites on its face that the stock thereby represented is fully paid and non-assessible.

The rule laid down in Illinois is that an exchange of property for stock in a corporation must constitute a valid contract of bargain and sale in good faith and by the result of honest judgment of the Board of Directors of the corporation accepting such property, or the person to whom such stock is issued is liable, both to the corporation and its creditors for the difference between the actual value of the property conveyed and the face or par value of the stock received; and as to *what* constitutes *constructive notice* to a subsequent purchaser of such stock may be illustrated by a leading case in Illinois on that question:

A corporation was organized for $1,000,000, and all its stock, excepting two shares, was issued for an interest in a patent. The stock certificates issued for this invention recited on their face that the capital stock represented thereby was "fully paid and non-

assessible." Some of this stock was sold or conveyed to a third party, namely, one who was not originally connected with the organization of the corporation. The corporation in question failed, and the creditors instituted appropriate proceedings for the purpose of holding the assignee of such stock jointly liable with the original owner.

In holding that the transferee *was* liable as contended, the Supreme Court of Illinois said: "It is not conceivable that a person of ordinary intelligence and prudence buying shares of stock in such a corporation would not become advised as to what property the corporation had. * * * It is clear that appellees knew that the corporation had no money and no property aside from the patent, and it would not be creditable to them to say that they believed the patent to be worth $999,800." * * * "We regard the proof as establishing the fact of notice to appellees of the transaction and over-valuation. They knew that the corporation did not have a paid-up capital of $1,000,000 and that * * * had not paid for the stock, unless it was given for the patent."

Hence it will be seen that not only the original subscribers of stock may be liable for any unpaid portion thereof, but that in many cases subsequent owners of such stock may be likewise liable. In the language of the Illinois Supreme Court: "The relation of the

stockholder who has not paid for his stock, to the corporation or the creditors, is the ordinary one of debtor."

The presumption is that a corporation has, or at some time had, money or property equal in value to the amount of its capital stock, and creditors have a right to presume that such is the case; hence the issuing of stock for less than the par value is ordinarily held to be a fraud upon the law, creditors and subsequent purchasers. It is *ultra vires* of the corporation to issue stock for less than its face value in money, and creditors (and under certain circumstances other stockholders) may insist upon the balance being paid into the treasury.

There is a rule, however, that where a corporation has increased its capital stock, and becomes insolvent, it may then issue any portion of such increased stock for the best price obtainable and no one will be liable therein, especially to existing creditors; the reason being that they did not extend credit upon the increased capitalization.

One of the fundamental principles in the law of corporations is that the majority may exercise the right to control the corporation's affairs. This right has suggested many opportunities for the perpetration of fraud upon the minority stockholders, and the repeated instances of such attempts which have come

before the courts of last resort have developed a system of jurisprudence for the protection of the minority stockholder.

Some of the familiar methods of attempting to take advantage of the minority stockholder is for the majority to vote large salaries to themselves, withhold dividends, incorporate an auxiliary enterprise, and favor such undertaking at the expense of the parent company, and various other devices, which all tend to the same result, namely, the detriment of the minority stockholder.

Majority stockholders, through directors who are their tools, often perpetrate such wrongs for their direct benefit. The dummy director is now an old device in the law of corporations, and courts of equity are inclined to look behind all such devices to ascertain the real parties in interest.

The language of the United States Supreme Court announces the modern rule in relation to this subject, to-wit: "When a number of stockholders combine to constitute themselves a majority in order to control the corporation as they see fit, they become for all practical purposes the corporation itself, and assume the trust relation occupied by the corporation toward its stockholders."

While courts of equity will interfere for the protection of minority stockholders, they will not undertake

to control the policy or business methods of the corporation, so long as they are conducted in *good faith,* although it may be seen that a wiser policy might be adopted, and the business more successfully conducted if other methods were pursued. It is in cases of fraud, or where some undue advantage is being taken of the minority stockholders, that courts will intervene and afford relief.

It is not infrequent that stockholders undertake to make an agreement among themselves whereby certain policies shall be carried out; that is, where certain individuals shall be retained in office, and otherwise attempt to regulate the voting of stock, and in that way control the corporation.

Another, and not unusual question, is that of limiting the sale of stock either to a class of persons, or to give one another the first opportunity and right to purchase stock which may be offered for sale. All of these objects are difficult to accomplish, for the reason that they are fundamentally against public policy.

Any contract which amounts to an unreasonable restraint of trade is illegal—that is, where the contract attempts to perpetually or unreasonably deprive the stockholder of his right to sell or control stock, or his right to vote thereon; but an agreement to place stock in *escrow* for a reasonable time to accomplish a lawful purpose or to insure the right to purchase such

stock at a given price is legal. And a condition inserted in the body of the stock certificate, regulating the transfer of such stock, either to a class of stockholders, such as dealers in a given line of trade, or to existing members may be legal.

In addition to the foregoing, any lawful object may be accomplished in the regulating of transfers of stock, but as before intimated, the terms employed in accomplishing such objects must necessarily receive careful attention.

A stockholder's right to vote upon his stock, either in person or by proxy, is necessarily an important one. In order that the minority stockholder may have representation in the directory, the laws of most States provide what is termed, "cumulative" voting; *e. g.*, where the number of directors is five, and the stockholder votes his shares of stock under the cumulative system, he would have five votes for each share of stock held by him, which he could cast for one director, or divide them among the five, as he may choose.

In case a stockholder cannot be present at the meeting of the stockholders of his corporation, he may appoint a *proxy* (to represent him), with full power to exercise all the rights of a stockholder; a proper form of such proxy will be found in the Appendix.* Such proxies may be made for a single meeting or for a

*Page 243

given length of time, and until acted upon, they are subject to be revoked at the will of the stockholder.

By-Laws and Their Uses.

The importance of a proper code of by-laws for the government of a corporation cannot be overestimated. They are the *internal* law for the government of the corporation itself; the duties and powers of its officers emanate from them, and the rights of the stockholders are often curtailed or enlarged by their provisions.

By-laws may not contravene any provision of the charter itself or the laws of the State under which it owes its existence, nor the common law, or be against public policy or the laws of the land, and they may not be inequitable or unjust or unreasonable in their nature.

Aside from these limitations they may contain any rule or provisions that the framer may choose to incorporate therein.

It is always wise to include in the by-laws of a new company the well-settled rules of law of the State of its creation, governing its conduct for the guidance of the directors and officers. Frequently it is desired that the duties as well as the authority of each officer should be clearly and minutely defined in order that no conflict between such officers shall occur, and this is

always to be commended where such a course is practicable or feasible, but in small companies it is unwise to burden and handicap the management with unnecessary rules which would interfere with the conduct of the business itself.

Every stockholder and officer is bound by the lawful provisions of the by-laws, and this whether they ever consented to their enactment or ever knew of their existence, but there is a different rule obtaining in regard to the public. The by-laws of a corporation should not affect strangers dealing with the corporation, and the violation of a rule contained in the by-laws will not relieve the corporation from liability to third persons. At the same time, creditors may insist that the provisions of the by-laws shall be enforced, and, of course, the stockholders have the same right.

Forfeitures, fines and the like can only be enforced through and in accordance with the by-laws, unless there are statutory provisions therefor; and the question of a stockholder's right to vote may be—within certain lawful limits—regulated thereby.

It is impossible to suggest an arbitrary or "stock" form of by-laws, as the exigencies and peculiar conditions of each organization must be taken into account; but the form of by-laws given in the Appendix hereto,* will be found satisfactory, or to contain use-

* See page 217.

ful suggestions in the preparation of such by-laws for any ordinary corporation, particularly where it is organized under the laws of Illinois.

In the organization of companies under the laws of the various States, the by-laws should be drawn in conformity with such local laws, and invariably require the utmost skill in their preparation.

The right to make by-laws is primarily in the stockholders of the corporation, unless that power is delegated to the directors, either by charter provision or statute law of the State where the corporation is created. The tendency of modern legislators is to delegate the power to the directors of the corporation, and where the right to make by-laws is vested in the directors, either by statutes or by the stockholders themselves, the directors also have the power to amend or repeal the same.

The difference between the by-laws of a corporation and its formal resolutions is chiefly the permanency of the former. While both are subject to amendment or repeal, unless the power to act upon the resolution is limited by the by-laws, it is subject at all times to the will of the directors or stockholders, as the case may be. For this reason, it is customary to make the question of compensation of officers a subject of special resolution, and to have such resolution embody the amount of the compensation to be voted,

and to conclude with the phrase "subject to the further action of this Board." The purpose of this limitation is to make the compensation of an officer wholly subject to the will of the Board of Directors—that is, to leave the power and to facilitate the right to change such compensation as the circumstances may suggest.

It is not infrequent that the directors and officers *themselves* violate or ignore important provisions of the by-laws. Where this has been done, it is well to ratify the acts done contrary to the provisions of the by-laws, where the same are not contrary to the interests of the corporation itself. Such ratification may be accomplished by proper resolution adopted by the Board of Directors in meeting assembled.

It should be borne in mind that the by-laws of every corporation, as well as all important resolutions of the directors, should be accurately transcribed upon the Minute Book of the corporation, and preserved in this way.* In the case of large corporations it is not infrequent that the by-laws are printed and circulated among the members.

*Under the law of some jurisdictions (South Dakota, for instance), by-laws are not operative until so recorded.

Corporate Records and Books of Account.

The books of account that are peculiar to corporations, and not in use by general unincorporated concerns, are few. They consist generally of the Minute Book, Stock Certificate Book, Transfer Book and Stock Ledger. Aside from these, it is not unusual for the treasurer to have a Private Ledger in which to keep Controlling Accounts. Besides, it is customary for all modern business corporations to have a more strict and comprehensive System of Accounting, particularly a complete Voucher System, by which an accurate and conclusive accounting can be furnished of all departments, and at any and all times, for the benefit and information of stockholders.

The statutes of a few States of the Union require other corporate books to be kept, known as Books of Publicity, but they are the exception.

Perhaps the book that is universally conceded to be first in importance among those peculiar to the corporation is its Minute Book—by which is meant the book wherein the acts and proceedings of the corporation itself are recorded, and particularly the acts that require sanction or authority from the Board of Directors; and these include the Record of the Adoption, as well as a Transcript of the By-Laws and their Amendments.

When the corporation is sufficiently large to justify

it, there should be two separate Minute Books, one for the stockholders, and the other for the Board of Directors, in which to record the meetings and proceedings of each.

The most approved and convenient plan of keeping the Minute Book of the corporation is to have a Certified Copy of the Charter attached to the first page of this book, or to have the secretary copy the Charter verbatim at the beginning thereof. Then the minutes of the organization meetings should follow in their proper order and dates.

The By-Laws should be recorded elsewhere in the Minute Book, preferably at the back, leaving enough unused pages after their recording to insert any and all amendments that may be made to the By-Laws. After this the minutes of each succeeding meeting should be recorded as they occur, following, of course, the meetings to organize.

It is not necessary that the minutes of meetings be written up at or immediately following the meeting to be recorded, nor is it necessary that the minutes be in the handwriting of the secretary; but it is advisable that the minutes of every meeting should be promptly recorded in order that no errors or omissions may be made, and in every case they should be signed, at least, by the secretary.

Care should invariably be taken to preserve all

documents and writings coming into the hands of the secretary, such as proxies, original motions and resolutions that have been reduced to writing by the member offering the same. After such documentary records have been recorded they should be preserved for future reference or comparison.

If the minutes of meetings are not taken in shorthand, there should be notes, at least, made of all important transactions, and the minutes should then be written up from such notes.

It is unquestionably advisable to approve the minutes of all meetings at the next succeeding *regular* meeting of the body, and this may be done by proper resolution after the same have been read; but the approval of the minutes of a regular or special meeting of a Board of Directors of a corporation cannot, in the absence of a special call being made therefor, be amended or approved at a subsequent special meeting of the same body, unless, of course, all directors are present, and the amendment or approval is unanimously concurred in.

Erasures should never be made to correct errors or omissions. The approved method is to draw a red line through any error that may have occurred and to insert the correction directly over the word or phrase corrected, and in this way errors may be corrected,

and the manner of accomplishing the same is explanatory of all resolutions authorizing such corrections.

In supplying omissions from minutes, unless the matter omitted is too voluminous, it should be inserted at, or near the point of omission in the record; but where a resolution or other complete transaction has been omitted, then it is advisable to make a separate entry thereof, either at the bottom of the page where the matter omitted should have been originally recorded, or in any convenient place in the Minute Book, taking care to make a note of such omission in red ink in the body of the minutes where the omission occurred, calling special attention to the omission and where the matter omitted may readily be found in the Minute Book.

The Stock Ledger should show to whom the capital stock was issued, and how it has been paid, and by whom. This ledger can be made self-balancing by establishing a Controlling Account in the General Ledger, entitled "Stock Ledger Balances," and the balance of which will show the standings of the Stock Ledger without drawing off the individual accounts, the net balance of which should always be in agreement with that of the controlling account.

It is the custom in most corporations for the secretary, treasurer or some confidential employe to keep a Private Ledger, provided with a lock in which are

kept the accounts which it is desired shall not be accessible to the regular employes. These are usually Capital Stock, Profit and Loss, Loans and Investments, Personal Drawing Accounts, Salaries, and any special Accounts of a Confidential Nature. A Controlling Account is then opened in the General Ledger entitled, "Private Ledger," to which the amount of the net debit or credit balance of these accounts is posted in one item at the close of each month. This provides the amount necessary to complete the General Trial Balance, and determine whether errors have been made in any of the other accounts, besides furnishing complete protection against the forcing of balances.

In some companies, the controlling account in the General Ledger is dispensed with, the list of Balances drawn off by bookkeepers at close of the month being handed to a person keeping the Private Ledger, to which he then adds his Net Balance, and determines whether or not the general books are correct.

In keeping the Stock Certificate Book of a corporation, care should be taken to avoid real or apparent over-issue of stock. This may be accomplished by insisting upon a proper surrender and cancellation of all outstanding certificates at the time of a transfer, by observing and complying with the usual Blank Forms provided in every properly worded Stock Certificate Book, and by making proper entries of all pay-

ments and transfers of stock this important branch of a corporation's accounting may be easily handled.

Examination of Books and Records.

The investing public are now almost universally demanding an Independent Investigation and Report On the Condition and Operative Results of a going business before seriously considering or taking any favorable action thereabout.

Particularly is this so where financiers are directly or indirectly concerned.

The cautious business man also demands such information, and the seller, or party desiring financial assistance, is usually ready and willing to furnish such a report where his business is prosperous, or even solvent, and presents a reasonable business opportunity.

The great public, or *quasi* public corporations, publish annually a report of this character for the benefit of their stockholders.

The compilation and furnishing of this important information is often entrusted to audit companies, whose equipment for the preparation and supplying of such reports is a force of accountants.

But the varying conditions and vitally important

questions which are necessarily met in the compilation of such information brings the most important part of this service—viz., suggestions which will assist the client in accomplishing the results desired—outside and beyond the scope and qualifications of the accountant. All these features are so closely allied to the work of the corporation lawyer, who is experienced in the science of organization and the conduct of transactions of this character, that a combination of the two undertakings necessarily proves of great advantage to the client. Hence, the larger corporations are now almost universally examined under the direction of legal counsel.

In making an examination of corporate books and records, the Minute Book should invariably furnish evidence of the authority for all large transactions outside the *regular course of business;* and recourse is necessarily had to this book as a basis for an intelligent examination of the corporation's transactions. Besides, it is frequently advisable and necessary to determine whether the corporation is exceeding its authority and transacting business outside the scope of its Charter, and reference for this purpose is necessarily had to the Charter or Certificate of Incorporation itself.

Important contracts may necessarily have to be *construed* in order to ascertain their real import. Then,

there may be other legal objections to the manner of issuing and payment of stock which would suggest themselves only to one versed in the law, and which, if discovered, might change the entire aspect of affairs. Therefore, a proper investigation of all these matters should invariably be made in advance of the Audit, whenever it is desirable to have an Earnings Statement to interest outside capital, or for reorganization purposes.

The orderly course of an independent examination of corporate books and records is to first examine the Articles or Certificate of Incorporation. This will show the date of organization, the purposes for which the company was organized, the amount of authorized capital stock, and who is liable for its payment.

The Minutes of the Stockholders' and Directors' Meetings should then be taken up. This record will show the manner of incorporating, the consideration for which stock has been issued, how the original assets were acquired, authority for all extraordinary expenditures, the remuneration of officers, the authority for all dividends paid, and the warrant for the making of important and unusual contracts that may be entered into outside the general course of business.

The Stock Certificate Book and Transfer Journal are then examined and checked against the Stock

Ledger to determine the amount of the capital stock outstanding, and the owners thereof, as well as to guard against any over-issue of stock.

The Trial Balances of the initial and terminating dates of the Audit contemplated are next examined and verified with the Books of Account. When the Balance Sheets of either or both dates are given they should be carefully examined, particular attention being given to the closing entries.

In all examinations, the verification of the Cash Accounts is of controlling importance. While the investigation may not be conducted with the special object of detecting fraud or shortages, all necessary precautions are to be taken to guard against the possibility of such irregularities being passed over.

The count of Cash on Hand is taken at the inception of the Audit, and a detailed list made of all Cash, Cash Tickets, Vouchers and Checks, Money Orders, etc., on hand. The Bank Deposit Book is then sent to the bank to be balanced. After this is done, the Bank Statement and Canceled Checks are examined, and reconciliation made with the Bank Balance as shown by the company's Cash Book.

In cases where the date of the examination is subsequent to the closing date of the audit, all entries, footings, and bank deposits must be verified for the intervening period. The cash items are then worked

back by adding to the balance the disbursements, and deducting the receipts, which should give the correct balance as at closing date of audit.

The footings of the Cash Book, general and subsidiary, for the entire period are checked. The disbursements are verified by the Vouchers supporting payments both as to payees and amounts. On the receipts side, the cash sales are checked from the records, and all discounts and allowances verified. The remittances are checked against the Ledger accounts, and the total receipts of each day against the bank deposits.

The footing of all books of original entry must be checked and postings to General Ledger verified.

If the General Ledger contains controlling accounts with subsidiary ledgers, these must be in perfect agreement. Where differences are found to exist they must be located and corrected. If no controlling accounts are kept, they must be constructed, and the balances of subsidiary ledgers verified in the aggregate.

All cash items and column footings must be checked from General Ledger into Cash Book and afterward reviewed to see that all this class of items are cleared on the receipt side of the Cash Book.

The postings from all other books of original entry are checked into the General Ledger. Footings of all

accounts in the General Ledger, open and closed, must be checked for the entire period and balances verified.

Sales Books are footed and charges verified by comparison with Original Orders and Shipping Receipts. Returns and Allowances are compared with Customers' Correspondence, Entries in Return Goods Journal and Stock-Keeper's Records.

Journal entries are verified by supporting Vouchers, which must all show proper signatures of approval and authorization.

Voucher Record is verified by comparison with Original Invoices. All Unpaid Vouchers are listed, the balance showing the amount outstanding, which should be in agreement with Accounts Payable in General Ledger.

Pay Rolls must be verified as to extensions and footings, and be signed by some person in authority.

Analyses are made of Profits and Loss and such Capital and Expense accounts as may be deemed necessary to show the results of operations of business. Adjusting Journal entries are made for such errors and omissions as have been developed in the course of the examination.

In the verification and valuation of Assets and Liabilities, the Title Deeds to all real estate should be examined and compared with book value of property,

as well as verification with amount actually paid. Proper charge for any depreciation should be made.

The Plant and Machinery Account should be verified by actual examination and comparison with Original Invoices. Care should be taken to see that no items which should properly be classed as Repairs and Maintenance are charged to Additions and Betterments.

Depreciation may be charged off at close of each fiscal period, the percentage being such as to finally reduce the cost of the plant to its residual value at the date when it is estimated it will have to be replaced. Or, another method is, to provide for the depreciation of a plant by crediting out of the net profits for the year—a certain fixed percentage of the cost of the plant and machinery to an account called "Reserve for Depreciation." This maintains, at all times, a charge on the Ledger equal to the actual cost, and is believed by many to be a better plan than charging, each year an arbitrary amount on account of depreciation. It would be possible to ascertain the exact cost of the plant by going back over the books for the period and ascertaining how much had been charged each year; but by keeping this account in the manner last suggested, the actual cost is known and the depreciation is provided for.

Patents, Franchises, Leaseholds, etc., are subject to such annual depreciation; and the conservative plan

is to charge off a sufficient amount each year, so as to extinguish their value at the time of expiration of such rights.

Inventories should be signed by the parties taking them, and verified by the accountant as to extensions and footings. Prices must be cost or market, whichever lowest. Goods on Consignment must be stated separately. All Bonds, Stocks and other securities must be verified by actual examination and valued at cost or market, whichever lowest.

Accounts Receivable must be examined and Delinquent Accounts listed. A reserve for these must be created in the Liabilities, and set up on the Balance Sheet.

Notes Receivable On Hand are checked with Note Register and verified by actual examination. Notes Discounted, but not matured, are verified by Certificate with Itemized List from Bank, for which a Contingent Liability is set up on Balance Sheet.

Notes Payable are checked against Note Register, and if deemed necessary, verified by communication with holders. Notes Paid are verified by examination of Cancelled Notes. Notes Payable, unmatured, on which the company are indorsers, must be set up as a Contingent Liability.

Reserves for discounts and all unexpired charges and unmatured obligations must be provided.

Adjusting Journal entries must be made to set back in surplus such bad debts or other charges as properly belong to periods previous to the one under review.

Following is a list of exhibits and schedules which should be prepared in order to furnish a comprehensive report to stockholders or prospective investors:

EXHIBITS.

"A" Comparative General Balance Sheet, showing Assets and Liabilities with Increase or Decrease for period.

"B" Comparative statement of Income, and Profit and Loss Accounts, showing percentage of various expenses to net sales.

SCHEDULES.

No. 1. Reconciliation of Bank and Cash Book Balances.

No. 2. Accounts Receivable—City Customers.

No. 3. Accounts Receivable—Country Customers.

No. 4. Accounts Receivable—Sundry.

No. 5. Accounts Receivable in Suspense.

No. 6. Bills Receivable.

No. 7. Accounts Payable—Purchase Ledger.

No. 8. Accounts Payable—Sundry.

No. 9. Bills Payable.

No. 10. Comparative Monthly and Yearly Sales, with percentage of Increase or Decrease.

No. 11. Comparative Statement by months, of General Expenses for Period.

No. 12. Stockholders of Record.

Further detailed statements may be furnished to accomplish the purpose desired, at the same time certain schedules referred to may be omitted within the limits of a complete audit.

One of the important prerogatives of a stockholder in a corporation is his right to examine the books and records of the corporation in which he is a stockholder, and this he may do by himself, or counsel, at any and all reasonable times and for all legitimate purposes.

To enable him to avail himself of this privilege, the law will compel the officers of a corporation to permit such examination and award damages for its denial.

The extent to which this examination may go is limited by the circumstances of the particular case, depending upon the nature and extent of the business, as well as its condition.

REORGANIZATION AND CONSOLIDATION OF ENTERPRISES

CHAPTER IV.

REORGANIZATION AND CONSOLIDATION OF ENTERPRISES.

REORGANIZATION—POSSIBLE ADVANTAGES THEREFROM.
CONSOLIDATION OF ENTERPRISES.
STOCK-JOBBING.

Reorganization—Possible Advantages Therefrom.

The title selected for this important subject pre-supposes the existence of two necessary conditions: *First,* that the business has been organized, either as a corporation or otherwise; and, *second,* that for some reason it is deemed necessary or advisable to change its status—that is, the manner of doing business, if not its very foundation and conditions. The manifold advantages of a corporate existence, as compared with the unincorporated, and the mode of accomplishing this object have already been discussed; and the opportunity to illustrate one of the chief advantages to be derived from the corporate idea, as compared with the unincorporated existence, is here presented.

Under a preceding head many of the common causes for reorganization have been given, and in discussing the various practical questions arising in the course

of the organization and conduct of business corporations, the advantages and methods of accomplishing this result have necessarily been suggested. At the same time a separate discussion of the subject of reorganization and its possible advantages to the established business, as well as to its owners, is necessary in order that many of the principles and advantages discussed may be illustrated and applied.

A business venture which has failed to attain success may often be reorganized in such a way as to give it the vitality it requires, and the lack of which has been the cause of its failure. For instance, a business which has struggled along under a faulty organization in the first instance, may be the subject of successful reorganization. This faulty organization may be due to a multitude of causes, such as a failure to provide sufficient capital, or a practical way to acquire it; unfavorable location, either of the business itself, or an unfavorable State for the creation of the corporation; or some legal defect in the incorporation itself.

In any and all of these cases the opportunity for success and rehabilitation is limited only by the circumstances of the particular case, and the skill, understanding and effort of the reorganizer.

It is only where the business itself is a commercial disaster, or impossible of practical exploitation, that failure is certain; and when this fact is ascertainable

or patent from an honest and scientific examination, it is then, of course, wise to abandon the undertaking altogether.

The class of existing and going concerns which are a subject for reorganization, and where the greatest benefit and profit may be derived therefrom, are: *First,* the established concerns which are making abnormal returns on the capital employed; *second,* where it is the desire of those interested in the permanency and continued success of the business to show their appreciation of the services of certain employes, such as department heads, and to afford them recognition in the business itself. They will be discussed in their order.

What is meant by "abnormal returns from the capital employed" is the accumulation of net profits annually beyond the recognized earning power of money; that is, what would be a fair rate of interest if the amount employed in the business was invested, and *similar security* was given for the repayment of the principal and interest. If the profits of a business in reality average in excess of this amount, some action should be taken, either to reorganize the business so as to increase the stock holdings of the owners of the business, or if the business conditions will permit, increase the capital stock and thereby arrange

to bring the earning capacity and the relative holdings of the members into harmony.

It is the universal experience of all that the sale of unlisted stocks can hardly be made above par; and if the stock has an earning power greater than the legal rate of interest it is in reality worth above par.

The second class has to do with the questions of value and also that of management. Many going concerns have been placed in the hands of department managers by allowing them to have a great or small stock interest; and this has been found very satisfactory to all concerned, in the majority of cases.

By properly re-valuing the busines that has been established, this object can be accomplished with comparatively little, if any, financial sacrifice by the owners. For, invariably, the ordinary employe will exert a greater amount of effort, and manifest a different kind and degree of interest in a business in which he has a financial interest; and in consequence, the business will produce greater results, and the earning capacity and value of the stock will be proportionately increased.

The following case will show many of the advantages, as well as the errors, that may occur in the reorganization of a business, and at the same time

serve as an illustration of many of the principles announced:

A and B were the originators of a manufacturing business which they had established and located in a suburban town. The business grew from a mere shop until it became an important factor in their line of trade. Finally they decided to "incorporate the business" and to that end formed a corporation—The A & B Company—and capitalized it for $200,000. Upon taking the inventory of the assets (the first ever made) it was found that a conservative estimate of the value, which included the factory site of ten acres of valuable land, was in the neighborhood of $180,000; besides, the bills and accounts receivable and cash on hand amounted to about $100,000 additional. Inasmuch as A, B and C (B's son-in-law) would own all of the stock of the corporation to be formed, they considered it immaterial that the value placed upon the assets so greatly exceeded the capitalization, and transferred the property to the new corporation in exchange for its capital stock.

In about three years A died and it became necessary in the administration of his estate to sell his stock in the A & B Company. The corporate books showed an average net earning for the three years of about 9% on the capitalization and tangible assets aggregating about $290,000. But notwithstanding this

favorable showing, it required diligent effort under the circumstances to find a purchaser for all of A's stock at par. D, a banker, was the purchaser, and he bought A's stock as an investment.

The entire capital stock of the A & B Company was now owned by B, C, and D, the banker. B was getting along in years and desired to retire from active business life. C was an "office man" and not familiar with the manufacturing details of the business, and, as before stated, D was otherwise engaged and had no experience in or desire to become actively identified with the manufacturing end. Finally it was decided to give three of the old employes an opportunity to become financially interested in the business and to make them officers of the corporation as well.

Upon due consideration it was now found advisable to reorganize the corporation and adjust the values and property rights of those already interested in order that the new members might be admitted and place the business in a permanent and practical form for future operations.

The new corporation was capitalized at $350,000, and the plant, tangible assets and good will of the A & B Company were transferred to it in exchange for $315,000 of its stock. The three employes named were then sold outright $2,000 each of the new stock at par and given a contract whereby they would re-

ceive an increase in salary amounting to $8,000 each, to be accumulated inside of a given period should they remain in the company's employ during that time, and to have stock issued to them annually in lieu of money for such yearly increase.

The former factory site was then sold for $40,000 cash and a new location with twenty-five acres of land was obtained as a bonus from a town (more favorably located) where such a manufacturing industry was desired. The plant was modernized and enlarged with the proceeds of the sale of the former factory site and the business was then reorganized upon a more modern practical basis.

As a result of this reorganization, B had $140,000 of stock in the new corporation; C $25,000; D $150,000, and the three employes had $2,000 each issued to them. This left $29,000 of unissued stock in the treasury, $24,000 of which would be transferred to the employes named as an increase of salary and to create a personal interest among those charged with the actual operation of the plant.

At the expiration of some two years the entire stock of this new corporation was purchased by a syndicate of capitalists for the purpose of turning it over to a "trust" in that line at 25% above the par value. The inventory that was then made and the earning statement for the period showed that the net profits of

the business were about 11¼% on the *increased* capitalization, as against 9% on the old, and this with the same business and practically the same management.

Another illustration presenting a different phase of the question involved is where two separate and competing corporations (which for convenience will be designated as A Company and B Company) decided to join forces and interests under one head. To accomplish this purpose A Company changed its name to include that of the B Company and increased its capital stock so as to permit the purchasing of the business of B Company with such increased stock. The various stock and financial complications and entanglements of both corporations were of such a nature that the new consolidation, when accomplished, presented an object lesson of many of the most troublesome conditions to be met with in corporate affairs.

The working capital proved to be insufficient and the increased stock remaining in the treasury was offered for sale. Many prospective purchasers were found, but upon investigation into the complicated conditions of the company's organization and affairs they all declined to purchase the stock in the treasury. Finally (and as a last resort), the stock was offered to the customers and employes of the surviving corporation and much of it was sold on "easy payments" or on installments, with the result that after strug-

gling along for less than a year a complete reorganization was found necessary and undertaken.

The conditions that confronted the reorganizers may be included in the following general statements, viz: faulty organization of A Company and inflated valuation of assets, both at the inception of the two undertakings and at the time of taking over B Company's property by A Company; stock hypothecated as collateral for individual loans of stockholders; dividends had been declared which impaired the capital; the corporate records had not been properly kept and the by-laws had never been adjusted to meet conditions existing after the consolidation; much of the increased stock had not been paid for and no means could be found of enforcing such payments; the stock of the company was scattered to the "four winds" and much of it could not be obtained for reorganization purposes; a large list of creditors were insisting upon payments of their claims; a "blanket mortgage" had been given the bank to secure it for current financial accommodations, etc. In consequence, failure was inevitable, and what in reality was a profitable and promising industry became a fit subject for a court of bankruptcy, where the same was sold in bulk, and thereafter became successfully reorganized by eliminating practically all of the stockholders of both A and B Companies, which meant a total loss to them.

of view, as well as from a sentimental or personal standpoint.

It has been aptly said that an ideal social condition would be that in which, in every department of industry, there should be one great corporation working with its possible economies and compelled to give to the public the full benefit of those economies, and to accept in return a reasonable rate of interest upon the actual capital employed.

While it will be universally conceded that such a condition does not yet exist, it must, however, be admitted that the public, employer, and employe have almost universally derived substantial advantages from the majority of consolidations which have heretofore taken place. And it may safely be expected that, with a more intimate acquaintance and understanding of these questions by the public, and a reasonable State or National control over great industrial combinations, a practical solution of the "trust abuses" will be at hand; *i. e.*, welcome centralization, but repress total monopoly—extortion.

It is doubtful when and where the advantage of monopoly in business was first discovered; certainly few successful enterprises have been found where the element is, or has ever been wholly absent. It will be found to exist in some form or other, either in the shape of patents, trademarks, trade names, or pecul-

iar characteristics and features adopted by the manufacturer of an article of trade which distinguishes it from all others of a similar nature. These and other species of monopoly are, and have been, the common objects of all successful enterprises.

One might as well undertake to compete with a rival up-to-date manufacturing concern without the aid of any of the modern machinery or facilities commonly employed as to wholly disregard the advantages that may be derived from centralization of effort and capital.

The statutes of the State must be strictly followed in effecting a consolidation of corporations; and in case the plan of reorganization or re-incorporating is adopted, what has been said in relation to the subject elsewhere will apply as well here, and therefore need not be repeated.

There is always present the important questions of *plans of procedure,* etc., which have been referred to throughout, and they should engage the particular attention of a competent, experienced corporation lawyer.

It is frequently important that a corporation should be legally and formally dissolved upon the sale of all its assets to a rival corporation, or to one formed for the purpose of consolidation.

A corporation can only be dissolved by expiration of

a time limit for corporate existence granted in the charter (and in some States several years thereafter) by decree of a court of competent jurisdiction; by voluntary act of the corporation itself in accordance with forms prescribed by the laws of the State of its creation, and where the charter is granted directly by the Legislature of a State, it may be repealed and annuled by such Legislature.

It is sometimes prescribed by statutes (as in Illinois) that the failure to file certain reports with the Secretary of State will work a forfeiture of the charter, or that the Secretary of State may arbitrarily cancel such charter upon the failure of such corporation to comply with the acts in question, but this is not lawful, unless in accordance with the Constitution and express wording, and reservation of such power in the statutes; without which the Secretary of State has no such power.

Unless some one of the above general conditions has been complied with, the corporation lives on, regardless of all other questions, and the subscribers to the capital stock, or stockholders, may be called upon at any time for any latent and unintended liability that may exist or arise.

The statutes of the various States prescribe the mode of voluntary dissolution of corporations, and these must be strictly followed. They usually require the consent of the stockholders, or a large majority of

them (usually two-thirds), to such dissolution, and that the question shall be voted upon formally by such stockholders at a meeting regularly and formally called in accordance with such statutes.

Stock Jobbing.

The most conspicuous abuse of the corporate plan of conducting enterprises is the creation of trusts and monopolies for the purpose of extortion and enforced subjugation. Immediately following this modern crime against society, is the more subtle and illusory perversion of the opportunities conferred, viz., "stock-jobbing."

The motives that prompt the commission of the offense first above referred to might be properly denominated greed and a reckless disregard for the rights and welfare of others; while the impulse that suggests and contributes to the achievement of the latter is obviously dishonesty.

What may and may not constitute stock-jobbing is a relative question, but the meaning of the term as here alluded to is the issuing of stock for fictitious or grossly inflated values, and the creation of corporations for ulterior purposes, such as the collection of funds from the sale of stock for the ostensible pur-

pose of promoting an enterprise, while in fact the money thus acquired is to be used for the personal benefit of the organizers themselves.

Another and less flagrant class of transactions which fall within the definition of the term here considered are those enterprises which are capitalized for an exorbitant and unreasonable amount for various reasons, among them being the desire to offer the stock of such a company at a discount for the purpose of inducing the inexperienced to buy it, and to gratify the visionary individual who may be behind the enterprise.

In order to illustrate the possibilities and effects of issuing stocks upon fictitious and inflated values of property transferred to the corporation at the time of its creation, one has only to investigate the inside history of many (if not a large majority) of our large industrial enterprises formed within the past few years, and, in fact, many of our railroads are reported to be capitalized "in the air," so to speak. In 1905 the capital stock of all the railroads of the United States amounted to $6,741,956,825, and the total liabilities, except current accounts and sinking funds, amounted to $14,765,178,704.* Should these figures be applied to an individual or single business enterprise the conditions would not be regarded with favor by

*Figures taken from Report for 1905, U. S. Bureau of Statistics.

financiers, for while the cost or value of properties are not available (except an estimate of some $12,000,000,000), it is assumed that the total amount of capitalization reflects a liberal valuation on the tangible assets at least of these properties, and if this is a correct premise, then the chief assets are the franchises and intangible rights which depend upon continued operation for their value. In brief, the railroads are financed upon their probable earning capacity, rather than upon substance, and while this might reasonably be regarded as legitimate and proper financing in this class of enterprises, if the same principles were applied to individual industries, they would be regarded as stock-jobbing.

In the recent combinations of industrial enterprises many instances may be found where the capital stock represents a generous valuation of the properties consolidated, while the bonded indebtedness of these concerns is equal to, and in many cases greater, than the capitalization; hence if both bonds and stocks have been sold and are outstanding and being held by investors, this form of property represents a large percentage of our present floating securities.

The foregoing is but illustrative of the abuses of the corporate system perpetrated in the higher realm of financiering for the purpose of drawing capital; and the ethical responsibility for the ultimate repayment

of the money thus secured rests upon those who have inaugurated the plans adopted, as well as upon those who have knowingly assisted in carrying such plans into effect.

Where financial assistance is sought in every-day business affairs it is the exception rather than the rule that enterprises are able to acquire such assistance except upon establishing their financial merit, and this must be based upon material wealth. The experienced financier would not regard with favor the application of an enterprise that was involved in a bond issue to the extent of its responsibility, when viewed from the material standpoint. In other words, the principles adopted by "high financiers," who are responsible for floating the securities which have been issued by railroads and industrial enterprises within the past few years, would not be the basis upon which financial assistance could regularly be obtained. While a more liberal rule necessarily obtains in the capitalization of enterprises than that adopted by banks and financiers generally in extending commercial credit, still the basis for a sane valuation is in principle the same.

It is not the purpose here to condemn or defend the transactions which now constitute, in a measure at least, the material for a general history of modern American finance, but to illustrate what appears to be

erroneous and prejudicial theories for the financial foundation of a business enterprise.

We must assume that the vast majority of the business of the future will be transacted by and through the corporate system, and it would seem that in the light of recent events no greater service could be rendered to those who are engaged in the "game of business," than to impress them with the responsibilities and ultimate consequences of their methods. While it is conceded that the moralists are the individuals most concerned with discourses on ethics and moral sentiment, still no vocation can wholly disregard questions that involve its reputation as a respectable and honorable occupation.

Business is now the principal occupation of society; it furnishes the means of livelihood, and financial as well as social advancement, for a great majority of mankind. In the process of evolution, which business is now and necessarily must continue passing through, it is imperative that those who are concerned about its future should take heed of certain inevitable consequences of what is recognized to be a violation of the law of natural right. The Socialist now sees the end of "class privileges and individualism" in the wake of our present commercialism; while the individualist hopes and believes that only the ethical improvement of mankind will work out the destiny of this modern dominant force.

Social scientists tell us that the corporation is fostering, if not responsible for our oppressive trusts and monopolies; that without this institution we would have free competition with its attending benefits. On the other hand, these same scientists admit that competition promotes "commercial cannibalism"; therefore, it may be seen that any attack upon a system of accomplishing a given end cannot be effective, and that after all, the *motives of the individuals* rather than the system under which they operate are essentially of controlling importance.

It is folly to lay the blame of unjust or oppressive conduct upon corporations; while they are, according to the predominant "fiction theory", a legal entity they are without moral or mental qualities—conscience, feeling or moral responsibility—and should not be chargeable with the acts, conduct or motives of their stockholders, directors or officers who control their policies and their every act; and no system of laws for the national or state control of corporations will make the *individuals* composing them, fair, equitable or just.

The subject of over-capitalization has already been discussed; in the succeeding chapter further illustrations are given of this and other abuses of corporate privileges which are so intimately connected with the subject in hand.

PROMOTION OF ENTERPRISES

CHAPTER V.

PROMOTION OF ENTERPRISES.

Promoters.

According to Webster, a promoter is "One who sets on foot and takes the preliminary steps in a scheme for the organization of a corporation, a joint stock company, or the like." Assuming this definition to be correct, there are few men who have not, at some time or other, acted the part of a promoter. At the same time, there are many persons who would resent being called a promoter, even of a single undertaking.

This prejudice is due primarily to the fact that the nature and opportunities of the business have attattracted so many visionary, irresponsible and (we believe we are justified in adding) dishonest persons. In fact, the confidence man is not a stranger to this field of activity.

But it is as unjust and unwise to condemn pro-

moters as a class, because frequently a "Colonel Sellers" or a "confidence man" has been found among them, as it would be to condemn our National currency on account of the discovery of an occasional counterfeit. In both cases the spurious is more frequently discovered among the smaller "denominations," and the reason is apparent.

Promoting, as a profession, was begun in London. A prominent commercial publication contained the following interview with one of the first of this profession to attract attention in the field of consolidating industrial enterprises:

"Months and months of the hardest kind of work is necessary to float these great concerns. People are incredulous, and it is hard to win them over. Some want more than the actual value of the property sought. It takes more than ordinary persuasion to convince holders of property, stocks or bonds that it is best for them to sell, or become a party to a project, whatever it may be.

"I take hold of nothing until I am convinced that success is certain. I then interest the *practical* men of the different concerns to be consolidated; these practical men agree with me to take three-fourths of the stock. Next, I interest capitalists in the remaining one-quarter of the stock. Only those who are best adapted are put at the head of the institution as

officers and directors. That insures the strictest economy and highest efficiency in the management of affairs. Then, after the company has been floated, I keep a sharp watch over operations.

"I have turned down dozens of offers for my services in promoting new companies."

It was an English promoter who conceived, or rather demonstrated, the plan of consolidating a number of properties in a certain line of manufacture, without the necessity of money entering into the transaction—at any rate, to any considerable extent. As the plan has been adopted in this country in so many important instances, it is deemed worthy of attention.

The following is a quotation from an article appearing in a leading commercial magazine, published upon the first "exposure" of the plan:

"A & Company were manufacturers of shoes, and their business showed a net earning capacity of 10% on the estimated value of their plant, to-wit: $1,000,000; B & Company, also shoe manufacturers, showed a net earning capacity of 7% on the value of their plant, to-wit: $600,000; C & Company, also shoe manufacturers, showed a net earning capacity of 8% on the value of their plant, namely, $400,000.

"D, the promoter, succeeded in interesting these three companies in the plan of consolidation, and upon its consummation, the properties were all turned in at

the valuations named, making a total of $2,000,000, with the average earning capacity of 8.7% on the valuation named.

"A bond issue was created on these properties of $2,000,000, and the capital stock of the corporation taking over the properties was placed at a like sum, namely $2,000,000.

"One-half of this capital stock was made preferred stock, 6% cumulative, and this issue and the bonds mentioned were all turned over to the various corporations, pro rata, in full payment for the plants, and the parties originally owning the plants were made officers and directors of the new corporation. This left the promoter with $1,000,000 of the common stock of this combined aggregation for his profit, and which, it is unnecessary to say, was promptly sold to the unsuspecting public."

Another example, and one nearer home, further illustrates the resourcefulness of human ingenuity: A, being a large dealer in coal, discovers a series of mines along and dependent upon a certain railroad for shipping facilities. He conceives the idea of consolidating, or rather buying up all of these mines and making them the basis of a large corporation, which would then be in a position to control the output of these properties. His first step was to get an option on all these industries at a price as near their reason-

able value as it was possible to do. In addition to this, he acquired options on most of the available land in that vicinity that was supposed to contain coal, or could be utilized for the purposes he had in view.

After he had acquired these options, he went to the officials of the railroad company referred to, and undertook to interest them in the project—making clear the point that the revenue from the traffic of these mines would in a very short time pay for the properties—and incidentally, that the same traffic would support, if not materially assist, in the construction of a competing railroad that would connect with another large system and thereby deprive them of this profitable traffic. While the railroad company in question did not, itself, take an interest in this project, it was by or through the assistance of the officers of this road that the deal was consummated and the options taken up, and working capital provided, with money raised by a bond issue upon the properties themselves. As a result of this transaction, $1,000,000 in first mortgage bonds were floated, and $3,000,000 of common stock was issued, largely for the *intangible assets* of this corporation, namely, the options themselves, which cost A in the neighborhood of $3,000 initial investment.

Still another example illustrates the more daring and troublesome class:

A, B & C organize a railroad corporation for the ostensible purpose of constructing a line of road to a distant city. They have an elaborate prospectus prepared, showing the proposed right of way and trains in operation. As a temptation to the investors, they show the enormous gross earnings of some "competing line" and others that are National prides, and then offer the stock of this phantom road at a *ridiculously* low figure *"for a limited time only;"* and, as a still further generous concession, they propose to permit small investors to acquire a block of this stock on easy payments.

Expensive and sensational advertisements are inserted in the daily press, and every modern and effective method of reaching the wage-earner is adopted; with the result that enough money is collected from the inception to continue the campaign of exploitation and promotion.

Now the real purpose of the scheme is put into action, namely, the payment of salaries to A, B & C, and this is continued until the enthusiasm of the available investors is exhausted.

There is necessarily a certain amount of actual development work done to aid the scheme and to bolster up a plausible defense in case of interference upon the ground of fraud, but the "Railroad" is ever in contemplation until the contributions cease, and

then the salvage of the financial wreck is passed along into the hands of a receiver for distribution.

These examples are given for the purpose of illustrating the possibilities for great financial gain which have attracted the speculator and unscrupulous alike to this profession.

Promotion Contracts.

Contrary to the prevailing notion, the contracts of promoters are not necessarily confined to the inception of a business or the organization of a corporation. They may, and usually do, extend into the initial operation of the enterprise, at least to the extent of raising the necessary capital and "putting on foot" the project in hand, after the corporation is formed; and for this reason, their acts and responsibilities may cover a large range of conduct.

Probably the questions causing the most controversy and litigation in this relation arise in connection with the promoter's compensation or profit; that is, how he can lawfully acquire compensation for his services, when his employment is to "set on foot and take the preliminary steps," in the organization or reorganization of a business project.

His compensation is often contingent upon the

accomplishing of a certain end, and the difficulty usually encountered is to ascertain for whom he may act, and to whom he can look for his compensation.

Assuming that the business with which he is employed is to be conducted by a corporation *to be formed,* manifestly he cannot bind the corporation until it is in existence, and even then there is some difficulty encountered where the services were rendered prior to the creation of the corporation in question.

Some States have statutes providing for the payment of capital stock of corporations organized therein —in services. They are South Dakota, North Dakota, Idaho, Colorado, West Virginia, Delaware, Maine, and a number of other States whose laws are otherwise deemed unfavorable to the principles announced.

What constitutes "services" is often a subject of inquiry. It has been held that a gift of stock to a promoter is illegal, and that the issuance of stock to "influential persons" for the use of their names, is equally so. But the issuance of stock by corporations created by any of the above named States for *bona fide* services actually performed, and for which the corporation either contracts, or accepts the benefit of by proper resolution, is legal.

When the promoter is acting for parties in interest in an established business, where it is desired to re-

organize or enlarge the same, the safe and proper method is to contract with the parties to be benefited by such services, for a percentage of the stock which they receive in payment for their interest in the enterprise. Then, upon the transfer of the business in question to the corporation when formed, the agreed percentage of the stock issued to the parties in interest for their share in the business enterprise, can be assigned to the promoter, and in that way obviate every question and fulfill every requirement.

The relation of the promoter to the corporation is usually *fiduciary,* and in consequence, his acts and duties in dealing therewith are governed by the rules of law pertaining to that relation generally.

For a general consideration of the subject in hand the rights and obligations of the parties will be classified as follows: The duties and responsibilities of the promoter (a) to his client; (b) to the subscribers of stock; (c) to the corporation promoted, and (d) to the stockholders after organization; then, the reciprocal duties and obligations of (e) the client and (f) the corporation to the promoter.

The duties and liabilities of the promoter to the client are generally based upon contract, either express or implied, depending upon the circumstances of the particular case.

Generally speaking, the promoter is held to a very

high standard of conduct, as he usually occupies a relation of trust and confidence; and whenever the question of his loyalty is involved the burden is upon the promoter to establish the utmost good faith and fairness in all his dealings with the client.

He may not acquire any secret advantage over his client by reason of his employment; and he is in many respects charged with the same degree of responsibility as an attorney.

The promoter's duties and liabilities to the subscriber of stock of the corporation frequently arise through representations made by him either in the prospectus or otherwise, before incorporating. The rule is well established that he is personally liable for any misrepresentations, and for withholding important information which the circumstances of the particular case make it his duty to disclose.

It is not moral obligations that the promoter is liable for; but where it is *necessary* for him to disclose important facts to enable the subscriber of stock to determine whether or not he will become interested in the proposed corporation, failure to disclose will render the promoter liable to such subscribers for any damages resulting from his silence. In other words, intentional withholding of information may be equivalent to misrepresentation.

The liability of a promoter to the corporation may,

under appropriate circumstances, be governed by the same rules as those applicable to his relation to the client. If the promoter places himself in a position of trust to the corporation, he is charged with all the responsibilities of that relation generally.

This responsibility invariably attaches where he is looking to the corporation (when formed) for his compensation, and where he is to be reimbursed for his expenses by it; and it has been said that the test of his responsibility is: *Was he benefited by the incorporation?* In any event he is bound to exercise good faith, and if he afterward acts for the corporation in securing capital, either from the sale of its stock or otherwise, he thereby becomes its agent and will not be permitted to acquire any secret personal advantage through such employment.

The most common source of disagreement and consequent litigation is where the promoter is personally interested in the property conveyed to the corporation at the time of its formation. In such a case the promoter is obliged to see that the property conveyed is fairly valued as well as fairly acquired by the corporation—that is, he must see to it that a disinterested Board of Directors pass upon the value of the property conveyed by him, and that it also is to the interest of the corporation to acquire such property.

This does not mean that the promoter may not

make a profit on property sold to a corporation which he is forming, but it does mean that he may not make a secret profit therefrom. It is his duty to disclose to his corporation that he is profiting by the transaction, or in any event he must not conduct himself so as to lead the directors to believe that he is *not* so doing.

The promoter of a corporation who becomes an officer thereof on its formation is in consequence to be treated as its agent and trustee, and is accountable to the corporation for any secret profits which he may realize upon property bought for or sold to the corporation.

In order to charge one with the responsibilities above referred to, it is often a question as to who is or is not a promoter. To constitute one a promoter of a corporation it must be shown that he was acting for and on behalf of the corporation, or that he assumed so to act; and that on the strength of such authority or assumed agency, the party complaining dealt with him upon such understanding.

The duties of the promoter to the stockholders of a corporation after it is incorporated are usually that of an agent. However, the promoter may be liable to all, or a part of the stockholders, for a separate accounting to them, where his course of dealing has placed him in the positon of a partner at the inception of the undertakings; that is, where he has se-

cured the co-operation of all or a certain number of the stockholders upon the representation that they were to share equally with him in the profits of the undertaking, in such a case he is liable, of course, as a partner; and the right of action is based more upon the right of a co-partner than that of a stockholder.

Where, however, the wrongs of the promoter are in the representations made alike to all, in relation to the corporation or its property or intentions, the right of action must necessarily be maintained by the corporation, and not by the stockholders.

The reciprocal duties and liabilities of the client to the promoter are usually regulated by contract, either express or implied, and those of the corporation to the promoter depend largely upon the circumstances. If he is acting directly for the corporation, its responsibilities to him are to reimburse him for his services, and, as before stated, if the corporation was not in existence at the time the services were performed, if it afterward adopts the acts of the promoter, or accepts the benefits of his work, it is liable to him for the reasonable value thereof.

If the statutes of the State under which the corporation is organized provide for a subsequent payment by it of the costs and expenses of incorporating, then, of course, he may recover for such expenses incurred in bringing the company into existence.

Where a promoter acts for a corporation that is to be formed, his contracts are similar to those of an agent generally under similar circumstances; and if the principal (the proposed corporation) is never brought into existence, there is no remedy for those who have dealt with the promoter upon un-executed contracts made in that way; but it must clearly appear that the promoter is acting for a corporation to be formed, or he will be personally liable upon such contracts.

Of course, where money or property has been turned over to a trustee, or to the promoter, upon such contracts as are here referred to, a different rule applies, and the prospective stockholder may have appropriate relief in case the corporation is never formed.

Among the important promotion contracts are those relating to the subscription to capital stock, as well as bonds or other securities, made at or before the complete organization of the corporation, or the taking over of tangible property in exchange for its stock or bonds, and this subject is so intimately connected with that of underwriting and guaranteeing such issues that they will be considered here and in the inverse order named.

Underwriting stock or bonds means simply to subscribe for a certain portion or the entire issue, upon the agreement that payments shall be made at some

future date or on installments, and at a price usually below par. Such contracts are necessarily made with banks and other financial institutions, syndicates or financiers of recognized ability and standing, who are not only able to dispose of such securities but to pay for them, even if they are not sold at the time specified in the underwriting agreement when such payments are to be made.

The advantages to the corporation from such a contract are many, the principal ones being the assurance of ready working capital at all events, the prestige of a well-known distributer of securities, the services of experienced financial agents, and a ready market.

The underwriter of such securities has also special facilities for ascertaining the responsibility of the institution issuing the securities offered, and the general investing public are aware of that fact and therefore more readily influenced by the representations of such underwriters concerning the merit and value of the investment.

Many issues of such securities are underwritten by financial institutions without the investment of any considerable portion of the value of the securities underwritten, as they are usually sold to the general investor before the payments by the underwriter become due; and his profit is usually the difference between the

price he contracts to pay for the entire issue and whatever may be realized from the sale to the investing public, and this varies according to the character of the investment, and the probability of their ready sale.

Guaranteeing stocks and bonds, as the term implies, insures the value and payment of the issue or portion thereof to the investor. Such an undertaking is usually to guarantee that stocks will not pay less than a certain specified dividend during a certain period, or that bonds will be paid in full at maturity. Analogous to this is what is termed the "trust-fund" plan, which is also designed for the protection of investors, or professedly so, but it is so little in actual legitimate use as not to merit discussion.

The organizers of the corporation are all considered in law as its promoters and their contracts as subscribers to the capital stock of the corporation *to be formed* for any lawful purpose are binding, as being based upon the consideration of their mutual agreements to take such stock when the corporation is formed, and each subscriber will be liable to the other subscribers for his failure to carry out his subscription. In addition to his liability to the other subscribers, a further liability to the corporation itself, as well as to its creditors, accrues as soon as the charter or certificate of complete organization is issued

by the State creating such corporation; in other words, as soon as the subscription is acted upon by such State.

As between the subscribers to the capital stock, a special agreement to accept property, at a fair valuation, in payment for such stock is also legal, and the valuation placed thereon by the subscribers or promoters will govern; such agreement will not bind the corporation unless acted upon and adopted by it.

Contracts for underwriting and guaranteeing the stocks or bonds of a corporation before it is formed, are not free from objection on account of the difficulty in the preparation of such contracts owing to the lack of a legal entity to contract with; it is usual to make such contracts with a trustee or party acting as such for and on behalf of the organizers of such proposed corporation or the parties who are to become interested therein.

To summarize, it may be said that promotion contracts or contracts that have to do with promotion of an enterprise are so numerous as to involve the whole law of contracts, and that any extended discussion of that subject is beyond the purpose of this volume.

Good Will. Trade-marks and Trade Names.

In the preceding chapters we have chiefly referred to *tangible* property and its relation to the subjects of organization and reorganization of business enterprises. Under this, and the following head we will discuss *intangible* assets, a species of property of comparative recent origin, and which is largely the product of the business ability, devotion to principle and ingenuity of those creating it.

As has been heretofore stated, the good will—general reputation for reliability and ability to serve—is frequently of greater value than the tangible assets belonging to an enterprise, and the law now recognizes it as a very respectable species of property. At the same time it is not permissible to arbitrarily value the good will of a business so as to create a fictitious asset, as is so frequently done.

The subject of Trademarks and Trade Names is so intimately connected with that of Good Will that it is deemed necessary, for a practical understanding of their importance and use, to consider them together. In fact they are inseparable when considered in the light and for the purpose here intended.

Trademarks are arbitrary symbols, devices or distinguishing marks applied to a given article of manufacture which are destined to appeal to the eye and

serve as a means of ready and certain identification from all other products of a similar nature; while the use of the Trade Name is to show the source from which the particular article came. Therefore the Trade Name, appealing as it does to the ear, is so intimately connected with the Good Will of the Manufacture as to be its means of identification.

The reputation and standing of a business is only identified and protected by and through its name and arbitrary marks for identification of its product, and the possession of either or both may enable a stranger to the particular enterprise to begin where another leaves off, and thereby profit by his past efforts. And here we find proof positive of the established ethical doctrine, viz: that honesty and fair dealing are indispensible to permanent success in business, for the most valuable and thoroughly established Good Will may perish when and as soon as the public discover any deterioration or lack of the qualities which have created it in the first instance.

The creation of the species of property under consideration, viz: good will and trade names, as well as trademarks, are the result of the labor, skill and investments of the possessor, and their protection and utilization as property universally receive adequate protection.

The life of a trademark is perpetual, and while the

law protects it for the benefit of the public, the protection of the trade name is principally for the party entitled to it.

The property right in trademarks is recognized by common law, and has been by the courts since the latter part of the fifteenth century. Most of the States have laws for the protection of trademarks, and the National Government has a complete system for their registration.

It is essential to the property right in a trademark that the party claiming it as his own should be the first to adopt it as such, and then to so use the mark as to show the *intent* to create a property right therein; and this may be done only by actual adoption and constant use by the originator or his successors or assigns.

The reason that the law of trademarks is designed chiefly for the protection of the public is to prevent the substitution of an inferior for a superior article, or of one man's goods for another's.

For what may be, as well as for what may not be an appropriate trademark, is beyond the scope of this book, it being a subject of too great moment and importance to be treated in a general discussion of the subject as this is designed to be. Like the general law, it must necessarily receive the attention of one versed in the particular branch of the science, whenever the

questions relating to the adoption and establishment, as well as the registration, of a trademark is involved.

Generally speaking, however, geographical names cannot be appropriated as such trademarks, and unless protected through the laws of unfair competition, there is no protection in the use of such geographical names. Neither can the name of a given commodity be used as a trademark, and this applies as well to the name of an article that is patented; for after the life of a patent has expired by limitation, the public has a right to use the name by which such patented article has been identified, as well as to its unrestricted manufacture. The name of the producer or words necessarily descriptive of the article cannot be used as trademarks.

To constitute a valid trademark and what may be adopted for such a purpose, the name or symbol must be exclusive—that is, it must be first adopted and used by the party claiming it for marking a certain article, grade or quality of his product; and he may not infringe on the marks of others so as to create confusion and deception. Generally speaking, any symbol, word or mark which others have not an equal right to use may be adopted as a trademark.

Registration of trademarks is not a means of *creating* them, but it serves to establish title, by proof of adoption.

The value of trademarks to a business is now almost universally understood and acknowledged; their use tends to fix in the minds of all who observe them the *object* advertised, regardless of the wording of the advertisement or whether it is ever read or not; hence the advertisement is not a loss in any event.

The Good Will and Trade Name are a species of property that may be valued and sold, and the purchaser protected in their enjoyment the same as any other property; the same is true with trademarks.

The assignment of trademarks may be made to the same extent as other property, but with one important exception—the trademark must (with few exceptions) accompany and pass to the party who purchases the good will of the business; any general assignment of the good will, will carry with it the trademarks in use, without any special reference to such trademarks in the assignment, and this is equally true of the trade name in use.

While it is, of course, impossible to fix the value of the good will of a business with mathematical precision and accuracy, still such value may be arrived at with sufficient certainty for all practical purposes. The common rule adopted for valuing the good will is, to first ascertain the net earning capacity of the business for a given period, usually for a sufficient number of years to reach the general average of such earning

capacity, then to divide the amount thus obtained by the number of years over which the estimate extends, and this will constitute the general average profits upon which the *value* of the good will depends. Then as to the value, it must necessarily vary according to the circumstances of the particular case.

A common practice in determining and fixing the value of the good will (where common stock is to be issued therefor) has heretofore been to place the amount at a sum upon which the annual net earnings would pay a dividend, equal, at least, to the legal rate of interest prevailing in the State where the transaction occurs. As an example, suppose the average annual net earnings to be fifty thousand dollars ($50,000); this would be five percent (5%) on one million dollars ($1,000,000) and that sum would constitute the value of the good will. But this is purely arbitrary and without foundation in reason, as the good will differs so widely in character from actual money or money's worth that to make it a basis of value upon its earning power is to go farther and place its intrinsic worth equal to money as well. Besides, the good will of a business has no value aside from its immediate connection with the business itself, and upon the winding up of the enterprise, by law or upon liquidation, the property vanishes.

As before intimated, no inflexible rule will apply in fixing the value of the good will of a business; its age, standing and earning capacity are *elements* of its value only.

The trademarks are integral parts of the business as a unit, and their individual value is not important, except as elements in the valuation of the good will and their relative value and importance to the future of the enterprise.

Here, as with patents, it is difficult to value "future prospects and possibilities" and this must depend upon the particular circumstances of the case under consideration; for if the business has been organized and established with skill and experience behind it, its future prospects and possibilities may be of far greater value than its present good will, and in this, at least, intangible property differs from that of tangible, viz: in that of their valuation.

Patents and Their Commercial Value.

It is to inventive genius that we owe much of the wonderful material progress of the world during the last few hundred years. Starting from the printing press, which has brought universal education and enlightenment, making civil and religious liberty

possible, a succession of astonishing inventions has carried civilization forward by leaps and bounds to this, the "Machine Age." The weaving inventions have clothed the humblest laborer in fabrics that once delighted kings. Steam and electricity have made all nations neighbors, and the minor special inventions and discoveries have filled the houses of the "common people" with luxuries which but a few generations ago were beyond the dreams of princes.

Recognizing the value to society of the wonderful fruits of invention and investigation, governments have sought to stimulate the efforts of inventors by the enactment of laws that enable them to reap a suitable reward for their services to humanity.

Although many an inventor has slept on his rights, and never realized enough to cover the expense of suing out a patent on his invention, yet many of the great fortunes amassed in this country have had patents for their basis. We readily recall the Pullman palace car; the telephone and numberless other electric inventions; the Westinghouse air brake; the mowing and reaping machines; the bicycle and automobile devices, and a thousand more. Many a great manufacturing business has been built up on some simple invention or improvement which cheapened the productions of some article of common use. In fact, the most fruitful field for the rank and file of the

army of inventors has been among the simpler, almost trifling, inventions, and improvements on other inventions.

The inventors of a shoe-button, a safety-pin, a hook-and-eye, the "roaming toy," a dime savings bank, etc., made quick and easy fortunes.

Notwithstanding the great number of patents issued, it seems as if the field for new ones grows wider the more the patents increase. Each new development seems to create new wants and the need of new devices. Inventions known as "novelties," and improvements on articles in every day use are constantly in demand.

Contrary to the prevailing notion among many laymen, the fact that an article has been "patented" is no conclusive assurance that an exclusive right "to manufacture and use" such an article is thereby secured to the owner. While it is true that the issuing of letters patent on an invention is *prima facie* evidence of its patentability, still it is not *conclusive* evidence.

In investigating the questions in hand, the statutory requisites to patentability first require consideration. In order that they may be understood, the law on the subject will be here given, namely:

"Any person who has invented or discovered any new and useful art, machine, manufacture, or compo-

sition of matter, or any new and useful improvements thereof, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, for more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor."

It is apparent that utility is one of the chief considerations upon which the Government grants its exclusive right to use and produce an invention; and this important requisite to patentability largely determines its commercial worth as well. As already appears, the invention must be "new and useful," as well as *useful,* but manifestly the fact that the invention is new would not render it of any value in the business world unless it was useful as well; therefore, in arriving at the commercial value of a patented invention utility is the first feature to consider.

The essential features that determine the commercial value of a patented invention, and the order in which they may be investigated, are: *First,* the utility, *i. e.,* the usefulness—intrinsic novelty and the probable

demand; *second,* the cost of production, *i. e.,* the manufacturing possibilities and means of producing the invention; *third,* the legal novelty—patentability, *i. e.,* the construction and validity of the specifications and claims, as well as the protection afforded thereby; and, *fourth,* the title of the patentee or alleged owner of the invention.

As to the utility and manufacturing merits and cost of an article, these are questions for the experienced business man and skilled mechanic, and they are of first importance in determining the commercial value of an invention.

Perhaps the simplest method of determining the legal novelty, *i. e.,* patentability of an invention, and the one primarily useful, is to see if it contains either or both of the following elements: *First,* if the article produced is as good in quality, and (as a result of the invention) such article can be produced at a cheaper rate than similar articles already on the market; or, if it is better in quality and can be produced at the same rate as other articles, or both combined; and as to the device or method of production, if the object in view or manner of obtaining the same be new, and the device or product be useful, then it may be considered a patentable invention and subject to such protection.

The law protects simplicity and economy of con-

struction, and the fact that the invention does not appear to be a great one will not prevent its being considered as a new and useful invention. The substitution of different kinds of power for the accomplishment of a common end is not a subject of patent; the mere assemblying of a number of old devices or forms for the accomplishment of a well-known result is not patentable; the omission of an element from a device so that the same result may be obtained by a less number of operations or devices *is* patentable; the combination of known elements for the production of a new result is patentable; the accomplishing of a greater result or utility from the same quality of material may be patentable, etc.

The fact that a resourceful patent attorney may have obtained letters patent on a device that did not in reality contain patentable requisites may be disclosed for the first time upon the trial of a suit for infringement. An illustration of this fact is found in a recent case decided by the Supreme Court of the United States, involving the validity of patents issued upon "sectional bookcases," where two rival manufacturers sought to establish their respective rights to the exclusive use of these now popular office and household articles, with the result that the Supreme Court held the patents to be void *for lack of patentability.*

Another practical subject for consideration relates

to questions of conveyance. The titles to patented inventions may be investigated in a similar manner to those of real estate, for the reason that the Government has a complete recording system, wherein all conveyances, licenses, etc., are (*or should be*) recorded; and an abstract of title may be had, by application to the Commissioner of Patents, and the payment of the necessary charges therefor, which depends entirely upon the number of transfers that have been recorded, and such an abstract of title is necessary to determine and show the title to any patented invention.

The subject of transfer of letters patent may be divided into three classes: *First,* the assignment of the whole or an undivided interest in an invention before letters patent have been issued;* *second,* an assignment of the whole, or an undivided interest, in an invention *after* letters patent have been issued,† and *third,* a license or other conveyance, not amounting to an absolute sale of the whole or any part of the invention itself.

An invention is susceptible of being conveyed prior to the issuing of letters patent thereon; and as between the parties to such a contract the same is binding, whether the patent ever issued or not; and should the patent issue, such contract has the same force and

* See form in Appendix, page 227 † See form in Appendix, pages 229-231.

effect as an assignment after issue. In fact, it is not unusual for such assignment to contain authority and instruction to the Commissioner of Patents to *issue* the patent to the assignee.

As to the conveyance of a patented invention after letters patent have issued, this is comparatively a simple matter, requiring only that the person who is the *owner* of such patented inventions shall execute a formal conveyance of the same. The only important observation that need be made on the subject of actual conveyance is as to the propriety of an inventor or owner of letters patent conveying an *undivided interest* (*i. e.,* a one-half or one-third interest) in the same; for such an act may destroy the value of the monopoly on the invention. It has been demonstrated and decided that the owner of an undivided interest in an invention has all the rights of the exclusive owner so far as to manufacture, vend and sell the device in question; and besides, it is essential that in prosecuting or defending an infringement suit the owners of the entire interest must join in order to maintain or defend such a suit; and this may be impossible after the conveyance of a *part* has been made.

In relation to contracts which purport to be licenses or "shop rights" for the exclusive or territorial right to manufacture or sell a patented invention, the word-

ing of such contracts may amount to a transfer of the entire interest of the inventor, instead of a license or contract, unless care is exercised in the preparation of such an instrument. In general, any wording that amounts to the sole and exclusive right and monopoly of manufacturing or selling the device is a transfer of the entire interest therein.

A simple test of the question as to whether a license in reality amounts to a conveyance is if the grant vests the entire interest in the invention or transfers the monopoly therein, it is an assignment; on the other hand, if it leaves in the assignor any part of the exclusive monopoly granted under the patent, then the conveyance is a license. It is always a question of *construction* of the language used, and it is necessary that great care should be exercised in the wording of the instrument intended as a license.

The soliciting of patents is essentially a *specialty* in the practice of Patent Law, and the commercial value of a patent depends (in a marked degree) upon the care, skill and ablity of its solicitor.

Much criticism has been made upon our patent laws on account of the opportunity which is accorded thereby to deprive the public of the benefit of new and useful inventions during the lifetime of the patent. An investigation of the patent records at Washington discloses the fact that many important improvements

on existing devices now in common use have been made, and that they have been purchased by leading manufacturers in the line of business to which the invention pertains; that instead of "bringing out" such inventions, and giving the public the benefit of their improvements, they are "shelved" so to speak.

The explanation for this evidently lies in the fact that one of the most expensive departments of every manufacturer is the "experimental department" and the great expense attached to the making of constant changes in a given product, besides the "confusion" which would be produced thereby. At the same time these "business reasons" do not satisfy or interest the public, who have granted the patent protection to the inventor as a reward bestowed for his invention and a stimulus to future efforts.

One of the manifold benefits to be derived by adopting the corporate system inures to the inventor when, as is frequently the case, he is without sufficient means to develop and market his invention. As has been hereinbefore intimated, he may not assign an undivided interest in his invention without risking the monopoly or exclusive right to manufacture, vend and sell the same, and this may occur as well by a copartnership arrangement for its control as by separate assignment; hence the almost universal adoption of

the corporate plan under all such and similar circumstances.

An inventor may form a corporation under the laws of any State, and assign his invention to such corporation without endangering the rights secured to him under the letters patent from the Federal Government. As in every other case, it behooves him to protect his rights in the corporation by retaining control or a sufficient interest in the same to insure protection. The corporation becomes the sole owner of the invention by such an assignment as above suggested, and through its elasticity for adaption to particular needs, any legal purpose may be accomplished, either through the making of a contract with the inventor or the issuance of its capital stock for the reasonable fair commercial value of the invention. And while the courts have held that there is no *presumption* of value to a patented invention, yet it may be safely said that such a value may be placed upon the invention as its particular merits and the extent of the protection afforded by the patent grant will warrant, and this may be determined by the rules referred to herein, and others which will present themselves in every case, and the reasonable value of such invention *to the corporation,* if fairly arrived at, will govern.

It has been the almost universal experience of those attempting to deal with inventors (as a class) that

they greatly exaggerate the real commercial value of their inventions; and this undoubtedly is due to the application and devotion which has been bestowed to create the invention in the first instance, or the lack of experience in marketing or the development of new improvements in existing devices.

Mining Enterprises. The vast amount of capital necessarily involved in acquiring, equipping, developing and conducting mining enterprises makes this one of the most favorable objects for corporate organization; and while many of the principles heretofore announced as relating to this form of existence generally apply with equal force to mining enterprises, still there are important questions which should be considered separately, as peculiarly applicable to such undertakings.

That there is such a legal and practical distinction between mining corporations and those organized for commercial and other undertakings has been recognized by courts of review. In considering the nature of mining as distinguished from commercial corporations, or corporations created for the conduct of commercial enterprises generally one court said:

"Mining corporations are *sui generis*. They are

organized and carried on upon principles *wholly different* from banking, railroad, insurance and ordinary commercial corporations having a subscribed capital stock."

And to some degree, at least, the rules relating to organizing the different *kinds* of mining corporations differ, particularly in the mode of financing. The plans that would be applicable to a corporation formed for the mining of precious metals would not ordinarily be appropriate for a corporation created for the operation of coal properties, or the development of a marble or stone industry.

The reason for this lies largely in the character of the undertaking. In the case first named its speculative character is to be taken into consideration, and the plans of financing applicable to mining enterprises of a speculative character differ widely from those commonly adopted for the promotion of those which are less so.

Specialization in the professions and business alike is now universal, and this fact is emphasized in the subject under consideration. An operator in the copper, lead or zinc field would not, as a rule, be equipped to operate a coal mine, and *vice versa.* And a miner of the precious metals could not adopt the same methods used by him, and which are acquired by

experience and training in that special department of mining, to either of the other classes named.

The geologist and mining engineer also specialize, as do the manufacturers and dealers in mining equipment and supplies; and the advantages of specializing in this field, as in all others, are now well recognized by all familiar with the subject. The owner of a valuable mining property which had met with disaster would now no more employ a mining engineer who was not a specialist in that particular class of mining than the same individual would call a general medical practitioner to perform a major surgical operation upon himself.

In the discussion of the subject in hand no attempt will be made to detail the history of that class of mining corporations which have been organized for questionable or fraudulent purposes—such as the acquiring of capital to pay salaries, and to provide a means for their promoters to get hold of stock certificates in order that they might get money from the inexperienced investors, the chief concern of those organizing such companies being to successfully avoid criminal prosecution for their transactions. At the same time no *extended* discussion will be attempted of the innumerable plans and devices which have been heretofore adopted to finance and promote speculative mining enterprises, particularly those devoted exclu-

sively to the mining of precious metals. It will be sufficient for the purposes of this volume to state that the manner of organization of such a corporation must be governed by the circumstances, and the laws of the State where the particular corporation is created, and to refer to some of the practical and distinguishing features generally.

The important questions of procedure which arise for consideration in the organization of and which are peculiar in a mining corporation are first the capitalization (and this involves the necessities of the incorporators and questions of finance); the next is undoubtedly the *purpose* of the corporation which is to conduct such an enterprise; and the third is the domicile, or the selection of a State for its creation.

It is customary (and undoubtedly the custom will continue) to capitalize corporations that are organized to mine precious metals at an arbitrary amount, without regard to the value of the property which it is to own and operate; then to convey the mining claims to the corporation for all, or a large proportion of the capital stock, and to then donate back into the treasury all, or so much of the capital stock as is to be sold for development purposes; and this might be considered the established custom, and one which is free from legal objections. Particularly is this true when such mining corporations are created under the laws

of a State where the mining of precious metals is the principal industry, for in all such States special laws have been enacted to encourage the development of the State's mining resources, and the speculative nature of the undertaking is there recognized and the value placed upon the mining claims or other properties by directors of domestic corporations are conclusive.

In regard to the less speculative mining enterprises, such as coal, copper, lead, zinc and stone, their capitalization should receive more conservative treatment, and they may be considered as more nearly approaching the commercial corporation in regard to their formation. An example of "high finance" in the consolidation of coal properties has been already shown, and the general principles therein exemplified will illustrate the possibilities of creating questionable securities by grossly-inflated valuation of the properties consolidated. It may be conceded that the latitude permissible in the valuation of properties of this character is greater than in the ordinary industrial undertaking, and that the "good-faith" rule, hereinbefore referred to, is all that is required; that is, the exercise of good faith and the absence of fraud in the valuation of such mining properties will constitute a safe rule, both as to liability of directors or upon the capital stock issued in payment for such properties.

It is of practical importance that the capitalization

of a mining corporation should be fixed with due regard for its ultimate object. If no further properties are to be acquired than the one in contemplation at the time of organization, the amount of capitalization should be governed by the value of the mineral rights or land, and the necessary working capital; and with a proper foundation the capital stock of such a corporation can be increased to meet any future expansion that may be deemed advantageous. But where a corporation is to be formed to acquire two or more developed mines, or with that ultimate object in view, the question is more difficult of solution, and no general rule can be announced that would meet the requirements of any but particular cases, or be of practical value in so doing; and it might be added that this is one of the numerous conditions which confronts the organizers of large corporations generally, and nothing but an intimate knowledge of the subject, and actual experience in its application, can qualify such organizers to properly meet and dispose of many of the important practical questions which invariably arise.

The creation of bonds which are secured by the property of the mining corporation, is frequently desirable, for the purpose of raising working capital as well as for the protection of those interested in the enterprise; and the use of such bonds have frequently been the means by which a worthy and enterprising operator

has ultimately acquired the ownership of valuable mining property.

The sale of such bonds among financial institutions is often difficult, for the reason that the property upon which they are secured usually lies at a distance, and the value of such property is based largely upon its continued operation and development; and unless this is assured, such bonds are not considered as desirable security, and experience has often demonstrated that when such bonds are sold in the open market at all, it has been at a great sacrifice. However, with proper management and with the property in a developed stage, the issuance of such bonds is not only advantageous but their sale to private investors or local financiers may be effected much more readily than stock, and without unreasonable sacrifice.

The purposes or objects of mining corporations are of importance for all the reasons heretofore given under another and appropriate heading, as well as for the following, which are in a measure peculiar to mining corporations: As before stated, it is a well-settled principle of law in every jurisdiction that a corporation cannot exceed the powers conferred upon it by its charter, and such powers are derived by and through the wording of the purposes or objects set forth in the application for such charter.

Where it is the intention of the incorporators to do

more than actually operate a mine, such as to conduct a general store, to erect and maintain dwelling-houses for employes, to construct and operate electric or other power plants, tramways, etc., in connection with the mining enterprise, it is, of course, necessary that these powers should be conferred upon the corporation through its charter.

In many States there are limitations placed upon corporations owning real estate, and in such States care must be exercised not to violate such laws; for it has been held that even though the charter is *granted* for purposes that are prohibited by the general act under which such corporations are created, the unlawful acts may be shown to defeat the corporation whenever it attempts to enforce such illegal objects. In legal phraseology, corporations may, under such circumstances, be "attacked collaterally."

The following may be considered as an approved form for the wording of the objects or purposes of a mining corporation organized under the laws of the State of Illinois for the purpose of mining coal:

"To mine, buy, sell and deal in coal and its by-products; to acquire by purchase, lease or other lawful means, coal lands and properties necessary and convenient for the construction, successful operation and maintenance of coal mines and their equipment; and to do and perform any and all lawful things incidental

and necessary to the successful operation of coal mines, and the production and sale of coal."

It might be appropriate to add that the *implied powers* incident to corporate existence need not be stated in the charter. In many States the charter enumerates, in detail, such implied powers, while such powers are left to implication in other States, and in the last named States the wording of the purposes or objects may be limited simply to the principal objects contemplated.

In relation to the domicile or State selected for the creation of a mining corporation, the observations hereinbefore made on the subject are applicable alike to such corporations; and except for the advantages to be derived by a trial in the Federal courts of possible litigation for personal injuries (as well as other cases) such corporations should be created under the laws of the State where their physical operations are to be conducted. The laws of such States are invariably more favorable to such corporations, and particularly to their financing, and the actual executive head of the enterprise, or business office, may be, and usually is at a distance from the property operated, and often in another State.

The law relating to the transfer of real estate generally is equally applicable to the construction of conveyances and contracts relating to mining rights; but

there are some practical and legal questions which will be briefly alluded to, as being particularly important in the organization and promotion of mining enterprises.

It is now well-settled law in the United States that the owner of the surface of land is also the owner of everything beneath it to the center of the earth. A few States have express statutes declaring that all minerals underlying lands owned by citizens of *foreign countries* belong to the State; and the rights of the Government to minerals underlying public lands may also be an exception; but generally, the rule is as above stated.

In the wording of conveyances, the significance of the word "minerals" is important, as it has been held that this word is sufficiently comprehensive to include not only gold, silver, iron, coal, etc. (when in workable quantities) but it also includes oil, natural gas and stone. Hence, the use of such phrases as "mineral substances," "coal and other minerals," "lead, zinc and other minerals," etc., may have important significance in such conveyancing.

Another important feature is the right of surface owners with relation to the minerals named. Of course, as regards coal, iron and other metals, the minerals are co-extensive with the surface. In the case of gas and oil this is not so. An operator with only

sufficient surface to accommodate his plant may reduce to possession as much oil or natural gas as though he owned any given amount of surface.

It is not uncommon for extensive mining development to be done under a royalty lease, and without regard to consequences of adverse decision by courts, in possible litigation resulting from future disagreement regarding its terms; and without taking into consideration the future possible necessities of the mining corporation. It is equally as common a practice to include in such royalty leases a provision of forfeiture in case of a breach by the operator, whereby all improvements and development work (which includes the shaft, etc.) will revert to the lessor, or owner of the land. The wisdom of purchasing *in fee* at least a sufficient amount of land upon which the mine is to be sunk and the plant located, cannot be doubted; and the advantages thereby acquired should be apparent to all interested in such an undertaking. The principal investment of a mining corporation is made in sinking its shaft, and the construction of its mine generally, and without the precaution above suggested an almost total loss can occur through some informality or defect made in the royalty lease under which such development has been made.

It is customary to take an option on the tract of coal or other mineral lands in advance of their pur-

chase, in order that prospecting may be done to ascertain the extent and quality of the mineral before paying for the same. In the Appendix hereto will be found an approved form of option agreement for this purpose.* This form supposes payment in cash for mineral lands or minerals. A form for the same purpose, where the payments are to be made in cash, and stock of the corporation to be formed for the development of the property, is also there inserted.† The plan last suggested has a double advantage to the operator, one in reducing the cash investment in the minerals or mining rights, and the other in the securing of local interest and the co-operation of their owners.

Frequently it is deemed advisable or necessary to deposit a deed or place the title papers to mineral lands in *escrow* pending the prospecting which it is deemed necessary to do to establish the value and extent of the mineral rights so conveyed, or for various other reasons or purposes which may arise. In such event the following form (with such modifications as the particular circumstances may require) will serve as a guide and suggestion for the purpose named:

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* Page 233. † Page 238.

Escrow Agreement.

(To be written on envelope or other enclosure containing deed, lease or contract.)

The enclosed deed (lease or contract) of.....is hereby placed in the possession and keeping of....., in escrow, upon the following terms and conditions, viz:

If.....shall place or cause to be placed to the credit of....., in the..... Bank of.....on or before.....190...., the sum of.....Dollars, then and in that event, the said.....is hereby authorized, empowered and directed to deliver the enclosed deed (lease or contract) to....., or to whom he may in writing order. In case the said..... shall not so place, or cause to be placed to the credit of said.....in said Bank, the said sum of.....Dollars, on or before..... 190...., then in that event the said.....is hereby authorized and directed to return the enclosed deed (lease or contract) to the said.....or to whomsoever he may designate in writing.

.....[Seal.]

.....[Seal.]

....., 190.....

The preparation of conveyances, and all mining contracts (as well as the doing of all things pertaining to the formation, and bringing into legal existence of mining corporations, where the rights of the individ-

uals are to be conserved and protected) must necessarily receive the careful attention of those versed in the law, as well as the financial and practical needs of such undertakings generally; and incidentally it might be said that there are no places in business affairs where the application of the well-known maxims, "what is worth doing at all, is worth doing well, and all good work must be paid for;" and "a man who offers his services at a specially low rate generally puts them at their true value"—are exemplified in the performance of services by the legal profession of this character. They may properly be termed "constructive services," as the results of such work are productive not only of *substantial* benefits to the employer but to the investing public and community at large as well, and the evolution in business methods to the present high state of perfection is largely due to their efforts.

APPENDIX

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APPENDIX

EXPLANATION

There is of necessity a discrepancy between what is recorded and what is to be desired in any work that undertakes to generalize on a subject so extensive as that of business organization; and here as in the law the exact question "at issue" is rarely discussed or settled by precedent. But the general rules and modes of procedure herein announced, together with the illustrations that follow, will be sufficient to enable the resourceful individual to avail himself of, not only the plans discussed, but suggest others that will meet his particular needs.

Throughout the text reference has been made, to various illustrations given in this department of the book, and when considered in conjunction with the text on the subjects referred to, they may be adequately explained to enable the reader to appreciate their application; but there are other uses and purposes to which such illustrations may be adapted, that require further comment which has been reserved for this particular discussion.

There are many general forms published and now available to all that simply illustrate arbitrary methods of conducting corporate affairs; but such forms, are as a rule, simply the author's personal methods of

accomplishing a given purpose, which might be done in a great variety of ways, and which would be equally effective and proper; hence no attempt will be made to encumber this volume with miscellaneous forms, but only those which may be of special value as practical illustrations.

It is rarely ever safe for the layman to undertake the use of forms in any event, for the most important questions (which would only occur to one versed in the law) may thereby be overlooked; a careful examination however, of forms and illustrations in connection with discussions on a given subject of this character, is of value, principally to enable the reader to arrive at a clear and proper understanding of what *may be done* in a given case or under other conditions that may arise.

The illustrations that follow are what may be termed unusual, inasmuch as they are not of the stereotyped variety so commonly published as "forms".

General Contract Between Incorporators to Form a Corporation. This illustrates an aproved method of taking the initial step in forming a corporation under the laws of any state. With such a contract the incorporators have settled all preliminary questions and their relative rights and obligations, both to one another and to the corporation itself; besides it places in the hands of the attorney who is to organize the corporation, all the data and authority which he will require, at least preliminary to the application for charter.

The use of this contract, while not essential or

necessary, (particularly in the smaller organizations) cannot but be of advantage where a large number of incorporators are to participate, or where it is desirable that the parties should bind themselves in advance of actual subscription to the capital stock.

Should special plans of financing be desirable, that fact would materially change the phraseology in regard to the character of stock, etc., and necessarily require the attention of legal counsel; but for the usual and ordinary case, this illustration may readily be adapted and prove a well devised plan to facilitate the organization of business corporations generally.

Special Contract Between Incorporators for the Purpose of Purchasing and Enlarging a Business. This illustration is susceptible to almost unlimited adaptation. The elasticity of the corporate form, as hereinbefore explained, has suggested—*and the same will continue to further develop*—means of adjusting the rights of owners of property and investors, which enable both to accomplish almost any desired result.

The illustration here shows a case where the owner of a manufacturing plant, and individuals with capital join forces in a corporation which is to own and operate the business formerly owned by such individual. By this method it will be seen that the owner of the supposed business is materially benefited by the transaction, and the individuals furnishing the capital may be adequately protected in their investments.

It will be readily suggested to the most casual reader that this plan may also be utilized in effecting the *sale*

of a business either immediately or after the corporation is organized and under operation. Such sale can be made by the transfer of stock of the former owner of the plant; and under ordinary circumstances, his stock (received for the plant) should be of greater value than the *plant* in his hands before organization. Besides, a sale should be more readily effected after organization than before.

Here, we also see a practical illustration of the opportunity to capitalize and reduce to a substantial property right, the good-will and trade name of the business, all of which would be of little or no money value unless protected in this way.

What has already been said on the subject of corporate financing, will enable the reader to apply the various suggestions offered to meet the requirements of any condition arising in the practical use of this illustration, where a going business is to be purchased or taken over by a corporation when formed for that purpose.

Reorganization Certificate. The use of this instrument is referred to in the text as applicable in a reorganization of an existing corporation where reasons exist for the same. The signing of such a certificate in duplicate and the surrender of the stock certificates held by the stockholder, places in the hands of the trustee selected, ample authority to proceed with such reorganization along the lines agreed upon and set forth in the reorganization certificate, and such terms may be whatever the particular circum-

stances demand or the individuals interested may impose.

This method has proven to be advantageous (from the reorganizer's standpoint at least) in a number of important cases. One of the chief obstacles in the way of the reorganization of a corporation, where a large number of stockholders exist, is the fact that a few minority stockholders may greatly hinder or prevent the accomplishment of such an object and involve the corporation in expensive litigation should an attempt be made by the officers, or those in control to *force* a reorganization; in adopting the method suggested, the reorganization may be placed in the hands of a disinterested person, and neither the stockholders nor the corporation become involved in the attempt; and besides, this method enables the reorganizers to negotiate and treat with each stockholder separately, and to prevent undue advantage being taken by any signer of this certificate after the same is executed.

Here, as in the illustration last referred to, many additional terms and conditions may be added to meet the requirements of any case, such as the issuance of preferred or other special stock or bonds, and the relinquishing of the rights of the holders of stock for such special stock or bonds, or the making of a trust company the trustee for the stockholders or corporation as the case may be; and the depositing of stock with such trust company in exchange for special Trustee Certificates or receipts is a common practice, particularly among large corporations, where a sale of the entire assets to another corporation in exchange

for its stock is to be effected, or a change in the financial plans are desired.

Where the owner of a business desires to ultimately dispose of his interest therein, or in case the reorganizers of a business desire to provide for the payment of the purchase money of the tangible assets of a business reorganized, without encumbering the same by a mortgage to secure a bond issue, it has often proven advantageous within the experience of the author to provide for special stock, such as is referred to in the text, as being preferred as to dividends and assets, or to create still another species, *i. e.* a special obligation in the nature of stock, whereby the corporation obligates itself to pay a certain dividend each year on such shares (out of the profits) and not to exceed a certain specified dividend on the other stock of the corporation, then any surplus remaining after the payment of such dividends must be paid to the holders of such special certificates from year to year, until the same have been retired.

In the hypothetical case given in the reorganization certificate above referred to, the corporation to be reorganized is supposed to be a foreign corporation, and one of the principal objects to be attained is a reduction of its capitalization and otherwise placed upon a sane working basis.

Appraisal of Property. This form may be utilized and adopted by either a Board of Directors in their official capacity, or by disinterested persons in appraising property, and form the basis of a resolution

for purchasing an established business or property for the use of a corporation.

Where such appraisal has been made in detail, that is, where an itemized schedule of the property appraised is made, this should be attached and referred to, in the appropriate part of the narrative, in relation to the subject matter of the appraisal.

Appraisal companies usually have approved forms for setting up and classifying assets, that make the form referred to here, applicable as a summary and convenient as a basis for the resolution following.

Resolution Ratifying Commissioners' Acts, Etc. This resolution is sufficient for the use of Directors (when ratifying the acts of the commissioners appointed by the Secretary of State in advance of complete organization, as in Illinois) or where property has been taken and the purchase price has been paid in whole or part with stock of the corporation, and the amount agreed upon credited on the stock subcription accounts of the owners of the property conveyed.

Installment Certificate and Assignment. Such a certificate as is here suggested is frequently issued by mining corporations, or those interested in disposing of a portion of the capital stock after the corporation is formed. Its issuance will prevent stockholders offering for sale or disposing of their stock, pending the period reserved for the sale of the stock remaining in the Treasury of the corporation.

General By-Laws. Where the by-laws of a corporation or the permanent features thereof are made a part of the charter, the form here suggested, with

such modifications and conditions as the incorporators may desire, can be adopted by the stockholders; but where the adoption of by-laws is left to the Board of Directors of the corporation after they are elected, (as in Illinois) such by-laws should be presented to the Board, and formally adopted by it at the first meeting after the Certificate of Complete Organization or charter, has been filed for record in the proper recording office of the state creating the corporation.

Innumerable additions or changes may be made to meet the requirements of incorporators; but the form here suggested with such modifications as will fit the particular case, is adequate for the needs of the ordinary business corporation.

The importance of by-laws has already been given in the text. So far as their *legal necessity* is concerned, their primary function is to control and authorize the time and method of calling and holding meetings; without them great inconvenience may result and expense be necessary to give the *actual notice* which the law requires, where there are no provisions made for otherwise serving such notice by the corporation, through its by-laws.

The remaining forms and illustrations are given for the convenience and ready use of incorporators; individual reference to them is deemed unnecessary and impracticable within the limitations of this volume.

GENERAL CONTRACT
TO
FORM A CORPORATION

THIS AGREEMENT made this first day of November, A. D., 1909, by and between the undersigned, John Brown, William Burbank, Edward Cunningham and Raymond Williams, all of the City of Chicago and State of Illinois.

WITNESSETH, That in consideration of the mutual undertakings and agreements of the parties hereto, as hereinafter set forth, and in further consideration of the sum of one dollar by each of the said parties to the other in hand paid (at the time of the execution hereof), the receipt of which is hereby severally acknowledged, the said parties to this contract hereby agree by and among themselves and with each other as follows, to-wit:

First, That a corporation shall be formed by us under the laws of Illinois substantially as follows:

(a) The name thereof to be the Perfect Automobile Company.

(b) The capital stock of said corporation to be One Hundred Thousand ($100,000.00) Dollars, divided into one thousand (1,000) shares of One Hundred ($100.00) Dollars each, said stock to be all Common Stock of uniform character and usual form.

(c) The purpose of said corporation to be sub-

stantially for the manufacture and sale of automobiles and their parts.

(d) Said corporation shall have a Board of Directors consisting of five in number, who shall all be stockholders of record at the time of their election.

(e) The officers of said corporation shall be a President, Vice-President, Secretary, Treasurer and General Manager.

(f) The location of the principal office to be at Chicago.

(g) The duration of said corporation to be 99 years.

Second, We hereby agree with each other, and the one with the other, that we will take the number of shares of the capital stock of said corporation set opposite our respective names hereunto subscribed, and will pay to the commissioners duly appointed by the Secretary of State of Illinois in that behalf, fifty (50%) per cent, of the par value of the said shares so subscribed by us respectively at the time of holding the first meeting of the said subscribers to elect a Board of Directors for said corporation; and we further agree to pay the balance of our said subscriptions whenever called upon so to do by the Board of Directors of said corporation, after the same shall be formed.

Third, We further nominate, constitute and appoint, (————————) as our (attorney or) agent, and the agent (or attorney) of the said corporation so to be formed, to create or cause to be created the said corporation in accordance with the laws of Illinois and this

agreement, and to do and perform all things necessary to bring said corporation into legal existence; and we further authorize and empower our said agent (or attorney) to draw on the funds in the hands of the legally constituted officers or agents of said corporation, for the necessary expenses attending said incorporation, and we further agree that any and all contracts which our said (attorney or) agent may make in such matter shall be binding upon said corporation and also upon us jointly and severally.

In Witness Whereof, we, the undersigned, hereby severally bind ourselves, our heirs, executors and administrators.

NAME	ADDRESS	SHARES	AMOUNT	

SPECIAL CONTRACT

TO

FORM A CORPORATION

THIS AGREEMENT made and entered into this first day of December A. D., 1909, by and between John Brown, party of the first part, and William Burbank, Edward Cunningham, Frank Smith and Raymond Williams, parties of the second part, all residents of the City of Chicago in the State of Illinois:

WITNESSETH, THAT WHEREAS, the said party of the first part is the owner of and now operating under his own name, the manufacturing plant and business located at 279 Michigan Avenue in the City of Chicago, said business consisting of special tools and machinery for the manufacture of automobiles and their parts, and also a stock of raw material for the conduct of said business, as well as various new and second hand machines particularly enumerated and set forth in the inventory attached hereto marked "Exhibit A";

AND WHEREAS, the said parties of the second part are desirous of becoming interested in and identified with said business on substantially the following terms and conditions:

NOW, THEREFORE, IT IS HEREBY AGREED: That in consideration of the mutual undertakings and agreements of the parties hereto, as hereinafter set forth, and in further consideration of the sum of One Dollar by each

of the said parties to the other in hand paid (at the time of the execution hereof), the receipt of which is hereby severally acknowledged, the said parties of this contract hereby agree by and among themselves and with each other as follows, to-wit:

First, that a corporation shall at once be formed by us under the laws of Illinois substantially as follows:

(a) The name thereof to be The Perfect Automobile Company.

(b) The capital stock of the said corporation to be Two Hundred Thousand ($200,000.00) Dollars, divided into Two Thousand (2000) shares of one hundred ($100.00) Dollars each, said stock to be all common stock of uniform character and usual form.

(c) The purpose of said corporation to be substantially for the manufacture, purchase and sale of automobiles and their parts.

(d) Said corporation shall have a Board of Directors consisting of five in number, who shall all be stockholders of record at the time of their election.

(e) The officers of said corporation shall be a President, Vice-President, Secretary, Treasurer and General Manager.

(f) The location of the principal office to be at Chicago.

(g) The duration of said corporation to be 99 years.

Second, the parties hereto agree to subscribe, take and pay for the said shares of stock in the following proportion and manner, namely: said party of the first part shall subscribe for.....shares of said capital stock; the balance of said shares of stock shall be sub-

scribed for by the said parties of the second part as follows: said Burbank.....shares, said Cunningham .....shares, said Smith.....shares, and said Williams.....shares.

Third, the said parties of the second part severally agree to pay unto the Commissioners appointed by the Secretary of State of Illinois, for the benefit of said proposed corporation, fifty (50%) per cent of the par value of said shares of stock so subscribed for by them at the time and whenever the said commissioners shall convene and hold the first meeting of the subscribers of said capital stock, and they further agree to pay the balance remaining due and unpaid upon said shares so subscribed for by them in cash into the Treasury of said corporation, as soon as they may be called upon so to do by the Board of Directors of said Corporation when formed.

Fourth, as soon as said corporation shall be fully organized the said party of the first part hereby agrees to convey, by good and sufficient instrument of conveyance a clear and perfect title to said manufacturing plant and business as enumerated and set forth in the inventory attached hereto as Exhibit "A", aforesaid, and to accept in payment therefor (————) shares of the capital stock of said corporation at its par value, namely (————) Dollars, and the balance of said purchase money for said manufacturing plant and assets amounting to.....Dollars, in cash; the same to be paid upon the tendering of a good and legal conveyance of said plant and assets by the said party of the first part, to said corporation when formed.

Fifth, it is agreed between the parties hereto that said parties shall constitute the first Board of Directors of said corporation, and that in consideration of the experience and former connection with the said business by the said party of the first part, that he shall be the General Manager of the same and receive a salary from said corporation for his services in that behalf amounting to.....Dollars per annum, payable in equal monthly installments of.....Dollars per month, and that a contract shall be made between the said corporation and the said party of the first part whereby his said services as General Manager shall be so secured and continued for a period of two (2) years from and after the incorporation of said company as aforesaid; that as said General Manager said party of the first part shall employ all labor and purchase all material and supplies necessary for the conduct of said business, and have general supervision of the mechanical department thereof subject to the control of the Board of Directors; and that said party of the first part shall devote his entire time, attention and best endeavors to the business of said corporation for and during the period aforesaid.

Sixth, it is understood and agreed that the said party of the first part shall assume and pay all outstanding obligations of every kind and nature existing at the time of the sale and conveyance of said manufacturing plant as aforesaid, and that he is to retain only the current book accounts and monies due the said business at the time of said conveyance aforesaid; that all other kinds of property and property rights

now owned and enjoyed by said business, including its good-will, shall be legally conveyed and inure to the said corporation when formed, and that he shall warrant and defend the title to said business and assets against all claims whatsoever.

Seventh, we further nominate, constitute and appoint....., as our (attorney or) agent, and the agent (or attorney) of the said corporation so to be formed, to create or cause to be created the said corporation in accordance with the laws of Illinois and this agreement, and to do and perform all things necessary to bring said corporation into legal existence; and we further authorize and empower our said agent (or attorney) to draw on the funds in the hands of the legally constituted officers or agents of said corporation, for the necessary expenses attending said incorporation, and we further agree that any and all contracts which our said (attorney or) agent may make in such matter shall be binding upon said corporation and also upon us jointly and severally.

THIS CONTRACT shall be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

.....

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REORGANIZATION CERTIFICATES.

THIS IS TO CERTIFY That Richard Roe of Chicago, Illinois (hereinafter designated as the transferor), has transferred and delivered to William Smith (hereinafter designated as the transferee), Certificate No. 23 for 1,000 shares of the capital stock of THE DOE ELECTRICAL MFG. CO., for the purposes and upon the conditions following, viz.:

First. That the transfer above named is made to enable the said transferee to effect a reorganization of the said company, by reincorporating the same under the laws of the State of Illinois; said Illinois corporation to be known by the same or similar name as the present organization, and to have a capital stock of $125,000; that the new corporation, when formed, shall have $10,000 in cash paid in its treasury, after all obligations of the present company are discharged; and also to have in its treasury $15,000—face value—of its capital stock for sale, at par; that said corporation, when reorganized by said transferee, shall possess and own by transfer from the Board of Directors of the present corporation all the assets thereof.

Second. That the said transferee agrees to deliver, and the said transferor agrees to receive, in lieu of said stock certificate, a new certificate in the said reorganized company, for 50 shares of its capital stock at the par value of $10.00 per share. fully paid and non-assessable.

Third. It is further understood that this agreement is made, and the said reorganization is contemplated, for the purpose of discharging the obligations of the said THE DOE ELECTRICAL MFG. CO., and to preserve its assets for the benefit of all its stock-

holders, equally, and that to accomplish said objects the said transferee is hereby vested with all the powers and rights of ownership, in and to the said stock so transferred, and with full power to consummate said reorganization in accordance herewith.

Fourth. It is further agreed that the said transferee shall perfect said reorganization, as soon as may be after all the outstanding stock in the present corporation is transferred and surrendered under the terms of this certificate; that upon his failure or inability so to do, within a reasonable time, he shall redeliver and transfer said certificate to the said transferor.

In Testimony Whereof, the said parties hereto, have hereunto set their hands, and affixed their seals, at Chicago, Illinois, this 4th day of May, A. D. 1907.

Richard Roe, [Seal.]
William Smith, [Seal.]

FORM OF APPRAISAL OF PROPERTY, TO BE ACCEPTED BY A CORPORATION IN PAYMENT FOR STOCK.

CHICAGO, ILLINOIS, May 12th, 1907.

We, the undersigned commissioners,* (heretofore, on the 29th day of April, 1907, appointed by the Secretary of State of Illinois), having carefully examined, investigated and valued the plant, machinery, assets and good will of the business, heretofore owned and controlled by The Doe Electrical Mfg. Co., of 333 Plymouth Avenue, in the City of Chicago, do appraise said assets of said business as follows:

Machinery, tools, lathes, presses, etc., etc., as per inventory attached hereto, marked Exhibit "A".....	$64,900.00
Stock of finished and unfinished product and merchandise, as per inventory attached hereto, marked Exhibit "B"..	25,400.00
Office outfit and fixtures as per inventory attached hereto, marked Exhibit "C"	1,200.00
Good will and intangible rights as per assignments and conveyances hereto attached, marked Exhibits "D," "E" and "F"	8,500.00
Total appraised value	$100,000.00

Respectfully submitted,

WILLIAM JOHNSON,
HENRY SMITH,
HENRY JONES,
} Commissioners (or Board of Directors).

*By here substituting the word Directors, in place of the word Commissioners the form may also be utilized by them.

RESOLUTION RATIFYING COMMISSIONERS' ACTS IN APPRAISING AND ACCEPTING ASSETS TO BE TURNED IN TO A CORPORATION, IN EXCHANGE FOR STOCK, UPON A REORGANIZATION.

WHEREAS, This company was organized for the purpose of engaging in the manufacture and sale of electrical appliances and supplies, and particularly to acquire, own and operate the business heretofore owned and conducted by The Doe Electrical Mfg. Co., at 333 Plymouth Avenue, in the City of Chicago, and

WHEREAS, It appearing to the Board of Directors of this company that the commissioners, heretofore on to-wit: the 9th day of May, 1907, appointed by the Secretary of State of Illinois to open books of subscription to the capital stock of this company, did in accordance with their authority and duty in the premises on to-wit: the 21st day of May, 1907, appraise and take over, as such commissioners and trustees for this company, the plant, business and assets of The Doe Electrical Mfg. Co., and are now holding the same as such commissioners and trustees subject to the action of this Board; and,

WHEREAS, It further appears, from the minutes and proceedings of said commissioners, recorded in the minute book of this company, that said plant and assets were duly appraised and valued at the sum of One Hundred Thousand ($100,000) Dollars, and that the said appraisal and valuation were carefully and properly made, and the valuation placed thereon is, in the judgment of this Board, fair and reasonable; and,

WHEREAS, Said property and assets have been re-appraised by this Board, and valued at said sum

of One Hundred Thousand ($100,000) Dollars, and it is the concensus of opinion of this Board that the acquiring of said property is essential to the best interests of this company, in order that it may become immediately a going and paying concern.

Therefore, be it Resolved, That this company do purchase of the said, The Doe Electrical Mfg. Co., through said commissioners,* the said goods, chattels and property mentioned and set forth in the minutes and proceedings of the said commissioners herein recorded, and set forth in the bill of sale accompanying said transfer to them, from said, The Doe Electrical Mfg. Co., and that the action of said commissioners in the premises be and the same is in all respects, hereby ratified, confirmed and adopted; and that the President and Secretary of this company be, and they are hereby authorized, empowered and directed to issue on behalf of this company, ten thousand (10,000) shares of its capital stock at par, to the several stockholders of The Doe Electrical Mfg. Co., as their rights appear by the terms of said sale, and in accordance with the resolution of the Board of Directors of said, The Doe Electrical Mfg. Co., conveying said property to said commissioners, in payment for said goods, chattels, and property, and the Treasurer of this company is also hereby authorized and directed to credit the said sum of One Hundred Thousand ($100,000) Dollars upon the subscription of William Smith to the capital stock of this company heretofore made by him.

* Or Directors.

RECEIPT TO BE ISSUED BY THE COMMISSIONERS IN ILLINOIS (OR BY A TRUSTEE IN ANY STATE) FOR PAYMENT ON ACCOUNT OF STOCK SUBSCRIPTION, IN ADVANCE OF COMPLETE ORGANIZATION.

No.....

Shares.....

Name.....

No..... No. of shares....

THE JOHN DOE ELECTRIC CO.,
Chicago.

$.....

THIS CERTIFIES, that.....
.....of.....,
being an original subscriber for .....shares of the capital stock of THE JOHN DOE ELECTRIC CO. (a corporation in process of organization under the laws of the State of Illinois), at its par value of $10.00 per share, has paid to us, as commissioners, duly appointed by the Secretary of State of Illinois (and also trustees), for said corporation, the sum of .....dollars, to apply on account of said subscription, in accordance with its terms, the same being....% of the total amount thereof.

THIS RECEIPT IS ISSUED on be-

Amount,

$.....

Installment,

.....

Date,

.....190..

half of said THE JOHN DOE ELECTRIC Co., and upon the condition that as soon as the said corporation is fully organized, that said payment hereby acknowledged will be credited on the said subscription, and that upon the surrender of this receipt by the owner thereof, and the payment of the balance due upon said subscription, according to its terms, a regular and duly executed stock certificate of said corporation will be issued to the said subscriber or his assignee.

Dated at Chicago, Ills., this ....day of..... A. D., 190...

.....
.....
.....
.....
Commissioners (or Trustees).

ASSIGNMENT OF THE FOREGOING COMMISSIONERS' RECEIPT AND THE SUBSCRIPTION UNDER WHICH THE SAME IS ISSUED.

FOR VALUE RECEIVED.....hereby sell, assign and transfer unto.....
.....all my rights, title and interest in and to the subscription heretofore made by me to .....shares of the capital stock of THE JOHN DOE ELECTRIC CO., together with the payment made thereon, as evidenced by the within Commissioners' receipt.

This assignment and transfer is made upon and in accordance with the terms and conditions of my said subscription, and I do hereby authorize and instruct the duly authorized officers of said corporation to issue the stock subscribed for by me, to the order of my said assignee upon.....compliance with all the conditions of my said subscription and the due surrender of this certificate.

Dated at.....this..... day of .....A. D. 190.....

[SEAL.]

Witness,.....

INSTALLMENT CERTIFICATE, FOR USE OF A CORPORATION WHEN SELLING STOCK TO BE PAID FOR IN INSTALLMENTS.

No....

Shares.....

Name,

.....

Rec'd on Acc't.

$.....

No..... .....Shares

THE JOHN DOE ELECTRIC CO.,
CHICAGO.

$.....

THIS CERTIFIES that.....
....., a subscriber for.....
Shares of the Capital Stock of THE JOHN DOE ELECTRIC CO., at its par value of $10.00 per share, has this day paid into the treasury of said corporation to be applied on account of said subscription, the sum of $.....,same being an installment of $..... per share.

IT IS MUTUALLY AGREED between the holder hereof, and THE JOHN DOE ELECTRIC CO., that the issuance of said shares of stock is subject to the conditions of the said subscription, and that the regular stock certificates of said corporation are not to be issued thereunder, until the first day of June, A. D., 1908; and that upon the payment of the remaining installments of said subscription in

Date,

.....

accordance with its terms, and the due surrender of this certificate, such regular stock certificate will, upon said first day of June, 1908, be duly issued to the said subscriber or his assignee.

Dated at Chicago, Ill., this.... day of....., 1907.

.....
Treasurer.

[CORPORATE SEAL.]
Attest:

.....
Secretary.

ASSIGNMENT OF THE FOREGOING INSTALLMENT CERTIFICATE, AND THE SUBSCRIPTION UNDER WHICH THE SAME IS ISSUED.

FOR VALUE RECEIVED.....hereby sell, assign and transfer unto.....all my rights, title and interest in and to the subscription heretofore made by me to.....shares of the capital stock of THE JOHN DOE ELECTRIC CO., together with the payment made thereon, as evidenced by the within installment certificate.

This assignment and transfer is made upon, and in accordance with, the terms and conditions of my said subscription, and is subject to the conditions thereof; and I do hereby authorize and instruct the duly authorized officers of said corporation to issue the stock subscribed for by me, to the order of my said assignee on the first day of June, A. D. 1908, upon.....compliance with all the conditions of my said subscription and the due surrender of this certificate.

Dated at.....this....day of.....A. D. 190..

.....[SEAL.]

Witness.....

BY-LAWS

OF

THE JOHN DOE ELECTRIC CO.

ARTICLE I.

BOARD OF DIRECTORS.

Sec. 1. The Board of Directors of this Company shall consist of five (5) stockholders, who shall hold their respective offices for one (1) year, and until their successors are elected.

ARTICLE II.

OFFICERS.

Sec. 1. The officers of this company shall consist of a President, a Vice President, a Secretary and a Treasurer, and such other officers and agents as shall, from time to time, be deemed necessary by the Board of Directors.

Sec. 2. Such officers shall hold their respective offices for the period of one (1) year following their election, and until their successors are elected, and with salary, if any, as shall be provided by the directors.

Sec. 3. Any officer may be removed by the Board of Directors, when, in their judgment, the interests of the company so requires.

Article III.

STOCKHOLDERS' MEETINGS.

Sec. 1. The annual meeting of the Stockholders of this company shall be held at its principal office in Chicago on the second Tuesday of May of each year at the hour of three o'clock P. M.

Sec. 2. A notice of such meeting, giving the day and the hour thereof, shall be signed by the secretary, and mailed to each stockholder of record as the stockholder's address appears on the books of the company, or so far as the same are known to the secretary, at least ten (10) days before said meeting day.

Sec. 3. Any business may be transacted at such annual meeting without specifying the same in the notice therefor.

Sec. 4. The president, or any two (2) members of the Board of Directors, may call special meetings of the stockholders of this company, which shall be held at the general office of the company in Chicago, or at such other place, in the City of Chicago, and at such hours, as the president or such directors may determine; and a notice, briefly stating the subjects which will come before such special meeting, shall be mailed to each stockholder at his last known address, at least five (5) days before the time for holding said meetings.

Article IV.

MEETINGS OF BOARD OF DIRECTORS.

Sec. 1. The regular annual meeting of the Board of Directors of this company shall be held on the second

Tuesday of May, at the office of the company in Chicago, immediately after the annual stockholders' meeting.

Sec. 2. Three (3) of the Board of Directors shall constitute a quorum for the transaction of any business at any meeting.

Sec. 3. The president of this company may call special meetings of the Board of Directors whenever he may deem it necessary so to do.

Sec. 4. The secretary shall, upon the request of the president, mail postpaid to the address of each director, so far as the same appears on the company's books, a notice of all special directors' meetings and shall specify briefly therein, the subjects that will come before the meeting, at least five (5) days before such meeting day.

Sec. 5. No business shall be transacted at any special directors' meeting, except that specified in the notice or call therefor.

Article V.

ORDER OF BUSINESS AT ALL MEETINGS.

Sec. 1. The order of business at all meetings of the Board of Directors and Stockholders, shall be as follows:

First—Roll call.

Second—Reading minutes of last meeting.

Third—Considering communications to the Board or Stockholders.

Fourth—Reports of officers to the Board or Stockholders.

Fifth—Unfinished business.

Sixth—Original resolutions and new business.

Article VI.

THE PRESIDENT.

Sec. 1. The president shall preside over all meetings of the Board of Directors and Stockholders, at which he may be present.

Sec. 2. In the absence of the president at any directors' meetings, the vice president shall be the acting president for such meetings.

Sec. 3. In case the office of treasurer and that of president of this company shall be filled by different persons, then all notes and bonds, or other evidences of indebtedness, shall be countersigned by the president.

Sec. 4. The fact that a director presides as president or chairman of any meeting of the Board of Directors, or stockholders, shall not prevent his voting, the same as though he were not president or chairman.

Article VII.

VICE PRESIDENT.

Sec. 1. The vice president of the company shall take an active part in the conduct of the business, and his duties and responsibilities shall be determined, from time to time, by the Board of Directors.

Sec. 2. In the absence of the president at any directors' meetings, or in his absence from the city for any protracted period, the vice president shall be the acting president.

ARTICLE VIII.

THE SECRETARY.

Sec. 1. The secretary of the company shall attend all meetings of the stockholders and directors when practicable; in his absence a secretary pro tem, or acting secretary shall be appointed.

Sec. 2. The secretary shall keep a correct record of the proceedings of the Board of Directors and of the stockholders in the corporate record book of the company, and he shall perform such other duties, from time to time, as the Board of Directors may designate by resolution.

Sec. 3. The secretary shall countersign all checks drawn upon the funds of this company.

ARTICLE IX.

THE TREASURER.

Sec. 1. The treasurer shall keep the moneys of the company in such bank, or banks, as may be designated by the Board of Directors; the deposit account shall be kept in the name of the corporation.

Sec. 2. He shall sign all checks, drafts, notes, or other evidences of indebtedness, for and on behalf of the company, and have full charge of its financial

affairs, subject, however, to the direction of the Board of Directors.

Sec. 3. All checks drawn by the treasurer shall be countersigned by the secretary before they are issued.

Sec. 4. The treasurer shall take an active part in the conduct of the business, and his duties and responsibilities shall be determined, from time to time, by the Board of Directors.

Article X.

ANNUAL REPORTS.

Sec. 1. It shall be the duty of all officers of the corporation to make full and complete written reports to the Board of Directors annually, on the second Tuesday of May in each year, of all matters pertaining to their respective offices, and the board may require any officer of the corporation, at any time, to make such reports, touching the business of his office, as they shall deem necessary.

Article XI.

CHECKS, DRAFTS, MORTGAGES AND BONDS.

Sec. 1. All checks and drafts shall be signed in the company's name by the treasurer, and countersigned by the secretary.

Sec. 2. In case the office of treasurer and that of president of this company shall be filled by different persons, then all notes, bonds or other evidences of indebtedness, shall be countersigned by the president, before they are issued.

Sec. 3. In case of the issuing of any mortgages or bonds on the plant or property of the company, it shall not be necessary to the validity thereof; that authority be obtained from the stockholders; the directors of the company shall have full power, right and authority to pledge the plant and assets of the company to raise necessary working funds therefor; or to secure any existing debts.

Article XII.

CERTIFICATES OF STOCK.

Sec. 1. All certificates of stock shall be signed by the president and secretary, and attested by the seal of the company.

Sec. 2. Capital stock shall be transferable only on the books of the corporation, upon return and delivery of the certificate so transferred, duly endorsed; the secretary shall cancel the same and issue a new certificate or certificates to the assignee.

Sec. 3. No person shall be entitled to vote at any meeting of the stockholders, unless his ownership of stock shall appear on the books of the company on the first day of the month preceding the time of such meeting, except in case of executors or administrators.

Sec. 4. Any stockholder may vote by proxy, duly authorized in writing and presented and filed with the secretary.

Sec. 5. In case of loss or destruction of stock certificates by the owners thereof, new certificates may only be issued upon such terms and conditions as the Board of Directors may impose.

Article XIII.

SALARIES.

Sec. 1. No salaries of any kind shall be paid to or claimed by any officer of this company, (as such) unless the amount of such salary is fixed and provided for by order or resolution of the Board of Directors, adopted prior to the performance of the services in question and recorded in the minute book of the company.

Article XIV.

VACANCIES.

Sec. 1. Vacancies in any of the offices, or in the Board of Directors may be filled, by the directors of this Company for the unexpired term, at any regular or special meeting of the Board.

Sec. 2. In the absence or disability of any officer or agent, the directors may, if they see fit, appoint in his stead an acting officer or agent who shall perform the duties of his office, during such absence or disability, under the directions of, and to be governed by the Board of Directors.

Article XV.

ADDRESSES.

Sec. 1. It shall be the duty of each stockholder, officer and director to inform the secretary of his post-office address, and of any change in the same; and it shall be the duty of the secretary to keep a book of such addresses.

Sec. 2. Notices, mailed post paid, to the addresses so given shall be deemed sufficient notice for any and all purposes.

Article XVI.

DIVIDENDS.

Sec. 1. Dividends may be declared from the profits of the company, at such times, and in such amounts, as the Board of Directors shall, from time to time, deem proper.

Article XVII.

CORPORATE SEAL.

Sec. 1. It shall be the duty of the Board of Directors, at their first meeting, to adopt a corporate seal for the corporation; and to affix an impression of the same upon the record book of the corporation opposite this article.

Article XVIII.

AMENDMENTS.

Sec. 1. These by-laws, or any of them, may be altered, amended, or repealed at any regular or special meeting of the Board of Directors, and at such meetings new by-laws may be added; provided thirty (30) days written or printed notice shall be given to all stockholders of any such intended alteration, amendment or repeal.

Adopted, this 16th day of May, 1907.

JOHN DOE,
RICHARD ROE,
WILLIAM SMITH,
HENRY BROWN,
JAMES JOHNSON,

Attest:

HENRY JONES,
Secretary.

Form of Assignment of Invention Before Patent.

(From "Rules of Practice," U. S. Patent Office.)

Whereas, I, John Jones, of Chicago, in the County of Cook, and State of Illinois, have invented a certain new and useful improvement in electric engines, for which I am about to make (or have heretofore on the .....day of .....A. D. 190....made) application for Letters Patent of the United States;*

And Whereas, William Smith of Chicago, County of Cook, State of Illinois, is desirous of acquiring an interest in the said invention and in the Letters Patent to be obtained therefor;

Now, Therefore, To all whom it may concern, be it known that, for and in consideration of Five Thousand Dollars, to me in hand paid, the receipt of which is hereby acknowledged, I, the said John Jones, have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said William Smith the full and exclusive right to the said invention, as fully set forth and described in the specification prepared and executed by me on the 5th day of March, 1907, preparatory to obtaining Letters Patent of the United States therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said Letters Patent to the said William Smith, as the assignee of my entire right, title and interest in and to the same, for the sole use and behoof of the said William Smith and his legal representatives.

*If application for Letters Patent have been made, give number of application, as well as date.

In Testimony Whereof, I have hereunto set my hand, and affixed my seal, this 25th day of June, 1907.

John Jones. [Seal.]

In the presence of

Harry Williams.

Form of Assignment of Undivided Interest in Letters Patent.

(From "Rules of Practice," U. S. Patent Office.)

Whereas, I, John Jones, of Chicago, County of Cook, and State of Illinois, did obtain Letters Patent of the United States, for an improvement in electric engines, which Letters Patent are numbered * * * and bear date the 30th day of June, in the year 1907; and whereas William Smith, of Chicago, County of Cook, and State of Illinois, is desirous of acquiring an interest in the same:

Now, Therefore, To all whom it may concern, be it known that, for and in consideration of the sum of One Thousand ($1,000) Dollars, to me in hand paid, the receipt of which is hereby acknowledged, I, the said John Jones, have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said William Smith the undivided one-half part of the whole right, title, and interest in and to the said invention, and in and to the Letters Patent therefor aforesaid; the said undivided one-half part to be held and enjoyed by the said William Smith for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said Letters Patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In Testimony Whereof, I have hereunto set my

hand, and affixed my seal, at Chicago, in the County of Cook, and State of Illinois, this 6th day of July, A. D. 1907.

JOHN JONES. [SEAL.]

In presence of

HARRY WILLIAMS.

FORM OF ASSIGNMENT OF ENTIRE INTEREST IN PATENT.

(From "Rules of Practice," U. S. Patent Office.)

WHEREAS, John Jones, of Chicago, in the County of Cook, and State of Illinois, did obtain Letters Patent, of the United States, for an improvement in electric engines, which Letters Patent are numbered * * * and bear date the 30th day of June, in the year 1907;

AND, WHEREAS, I am now the sole owner of said patent, and of all rights under the same; and, whereas, THE JOHN DOE ELECTRIC CO. (a corporation of Illinois), of Chicago, County of Cook, State of Illinois, is desirous of acquiring the entire interest in the same:

NOW, THEREFORE, To all whom it may concern, be it known that, for and in consideration of the sum of ten thousand dollars, to me in hand paid, the receipt of which is hereby acknowledged, I, the said John Jones, have sold, assigned and transferred, and by these presents, do sell, assign and transfer, unto the said, THE JOHN DOE ELECTRIC CO., the whole right, title and interest in and to the said improvements in Electric Engines and in and to the Letters Patent therefor aforesaid;

The same to be held and enjoyed by the said THE JOHN DOE ELECTRIC CO., for its own use and behoof, and for the use and behoof of its legal representatives, to the full end of the term for which said Letters Patent are or may be granted, as fully and entirely as

the same would have been held and enjoyed by me had this assignment and sale not been made.

In Testimony Whereof, I have hereunto set my hand and affixed my seal, at Chicago, in the County of Cook, and State of Illinois, this 18th day of May A. D. 1907.

John Jones. [Seal.]

Signed, sealed and delivered in presence of

William Smith.

Form of Coal Option,

With Deferred Payments:

This agreement, Made and entered into this..... day of.....190....., between..... .....of.....County,....., party of the first part, and.....of....., party of the second part:

Witnesseth, That the party of the first part in consideration of one dollar ($1.00) and other good and valuable considerations to.....in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, does hereby grant and sell unto said party of the second part, his heirs or assigns, the exclusive right, or option, for the period of.....months from the date hereof, to purchase at the price and upon the terms hereinafter stated, all the coal and mineral lying and being under the surface of the following described real estate situate in.....County,.....to-wit:..... .....
.....
.....
.....
.....
.....
the said above described real estate containing..... acres of land, more or less.

Said party of the second part hereby agrees that he will, within 30 days after like options are obtained on at least 1,000 acres of coal near or adjacent to said premises above described, begin drilling, and then

cause to be put down upon or in the neighborhood of the above described real estate, one or more drill holes for the purpose of ascertaining and testing the amount and quality of coal that may be found in said vicinity; and, that as soon as said drilling shall be completed, and it is thereby demonstrated to the satisfaction of the said party of the second part, that coal of sufficient thickness and quality underlies said above described premises, then and in that event, said party of the second part hereby agrees to pay for said coal above described at the price hereinafter mentioned, in the following manner, to-wit: *First*—to pay to the party of the first part one quarter of the purchase price in cash; *Second*—to give to the said party of the first part his promissory note for one quarter of the purchase price of said coal; *Third*—to give to the said party of the first part his promissory note for one-half, or the balance, of the purchase money, said notes to be payable to the order of said party of the first part on or before one and two years, respectively, after the date thereof, with interest at the rate of 6% per annum, and the same to be secured by a mortgage in the usual form upon said coal and premises above described.

And the party of the first part hereby agrees at or before the expiration of.....months from the date hereof, to convey to the said party of the second part, his heirs, legal representatives or assigns, by a good and sufficient WARRANTY DEED accompanied by a merchantable abstract, brought down to date, at and for the price of.....dollars per acre, to be paid by said party of the second part in the manner hereinbefore mentioned, all the coal and mineral lying under

said above described premises, together with the right to mine, dig and remove the same therefrom, and together with the right to use all entries under said premises for the purpose of hauling, mining and removing coal from any other lands near or adjacent to the above described premises.

And under the continuance of this option the party of the first part hereby grants to the party of the second part the right of ingress and egress over said premises for the purpose of prospecting and drilling for coal on said premises, and the right to erect such structure or structures as are necessarily incident to the carrying out of said work, and hereby releases said party of the second part from all claims for damages which may arise upon account of said drilling and prospecting, except damage to growing crops (if any), for which said second party agrees to pay a just compensation.

Said party of the first part further agrees to sell to said party of the second part, his heirs, or assigns, at any time within one year after the purchase of said coal as aforesaid, such portion of the surface of said premises as may be desired for the erection of tipples, buildings, power houses, railroad tracks and switches and other improvements for the mining, removal and transportation of said coal (not to exceed 30 acres, however) at the price of.....dollars per acre, and to convey the title to said surface to said party of the second part, his heirs, legal representatives or assigns, by a good and sufficient WARRANTY DEED, accompanied by a merchantable abstract therefor.

It is further agreed that no shaft shall be sunk or railroad built within five hundred (500) feet of any

important building now standing upon said premises and owned by the party of the first part, except by special contract hereafter secured.

Said first party further agrees that if said party of the second part shall be drilling and testing said premises or premises adjacent thereto at the time of the expiration of this option, to then extend the time thereof for a period of sixty days from the date of the expiration hereof.

.....

.....

IN WITNESS WHEREOF, we herein bind ourselves, our heirs, legal representatives and assigns, and have affixed our hands and seals the day and year first above written.

.....[SEAL.]
.....[SEAL.]
.....[SEAL.]
.....[SEAL.]

STATE OF....., } ss.
County of....., }

I, ... a Notary Public in and for said county, in the state aforesaid, DO HEREBY CERTIFY That .....

.....

personally known to me to be the same person..... whose name.....subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that.....he.....signed, sealed and delivered the said instrument as.....free and voluntary act, for the uses and purposes therein

set forth, including the release and waiver of the right of homestead.

GIVEN under my hand and notarial seal, this..... day of.....A. D. 190.....

.....

Notary Public.

Form of Coal Option,

Payments To Be Made, Either in Whole or Part, with Stock of the Corporation *To Be* Formed for the Development of the Field Optioned:

This agreement, Made and entered into this..... day of.....190....., between..... .....of ..... County, ..., party of the first part, and.....of....., party of the second part:

Witnesseth, That the party of the first part in consideration of one dollar ($1.00) and other good and valuable considerations to.....in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, does hereby give, grant, sell and convey unto said party of the second part, his heirs, or assigns, the exclusive right, privilege, or option, for the period of.....months from the date hereof, to purchase all the coal and mineral lying and being under the surface of the following described real estate situate in.....County, ..., to-wit:

.....

.....

.....

.....

.....

.....

(said above described real estate containing..... acres of land, more or less) at and for the price of $.....per acre, to be paid as follows, viz: ....dollars in cash, and the balance of said pur-

chase money to be paid in Cumulative 7% Preferred stock of the Mining Corporation which shall be formed for the purpose of taking over said coal above described, and the balance of the field of at least 1,000 acres lying near or adjacent to said coal, and for the mining and removal of the same. It being understood and agreed that said corporation above referred to, shall be organized under the laws of.....and have a capital stock of $200,000.00, the same to be equally divided into Cumulative 7% Preferred and Common stock, said preferred stock to have all the rights and privileges of the common stock.

Said party of the second part hereby agrees, that he will, within 30 days after options are obtained on at least 1,000 acres of coal near or adjacent to the premises above described, begin drilling, and then cause to be put down upon or in the neighborhood of the above described real estate, one or more drill holes for the purpose of ascertaining and testing the amount and quality of coal that may be found in said vicinity; and that as soon as said drilling shall be completed, and it is thereby demonstrated to the satisfaction of the said party of the second part, that coal of sufficient thickness and quality underlies said above described premises, then and in that event, said party of the second part agrees to pay for said coal above described at the price and in the manner above set forth.

And the party of the first part further agrees at or before the expiration of.....months from the date hereof to convey unto the party of the second part, his heirs, legal representatives, or assigns, by good and sufficient WARRANTY DEED, accompanied by a merchantable abstract, brought down to date, at and

for the price of.....dollars per acre, to be paid by said party of the second part in the manner hereinbefore mentioned, all the coal and mineral lying under said premises, together with the right to mine, dig and remove the same therefrom, together with the right to use all entries under said premises for the purpose of hauling, mining and removing coal from other lands near or adjacent to the above described premises.

And under the continuance of this option the party of the first part hereby grants to the party of the second part, the right of ingress and egress over said premises for the purpose of prospecting and drilling for coal on said premises, and the right to erect such structure or structures as are necessarily incident to the carrying out of said work, and hereby releases said party of the second part from all claims for damages which may arise upon account of said drillings and prospecting, except damage to growing crops (if any), for which said second party agrees to pay a just compensation.

Said party of the first part further agrees to sell to said party of the second part, his heirs, or assigns, at any time within one year after the purchase of said coal as aforesaid, such portion of the surface of said premises as may be desired for the erection of tipples, buildings, power houses, railroad tracks and switches and other improvements for the mining, removal and transportation of said coal (not to exceed 30 acres, however), at the price of.....dollars per acre, and to convey the title to said surface to the party of the second part, his heirs, legal representatives or assigns, by a good and sufficient WARRANTY DEED, accompanied by a merchantable abstract.

It is further agreed that no shaft shall be sunk or railroad built within five hundred (500) feet of any important building now standing upon said premises and owned by the party of the first part, except by special contract hereafter secured.

Said first party further agrees that if said party of the second part shall be drilling and testing said premises or premises adjacent thereto at the time of the expiration of this option, to then extend the time thereof for a period of sixty days from the date of the expiration hereof.

.....

.....

IN WITNESS WHEREOF, we herein bind ourselves, our, heirs, legal representatives and assigns, and have affixed our hands and seals the day and year first above written.

.....[SEAL.]
.....[SEAL.]
.....[SEAL.]
.....[SEAL.]

STATE OF....., } ss.
County of....., }

I, ... a Notary Public in and for said county, in the state aforesaid, DO HEREBY CERTIFY That .....

.....

personally known to me to be the same person..... whose name.....subscribed to the foregoing instrument, appeared before me this day, in person, and acknowledged that.....he.....signed, sealed

and delivered the said instrument as.....free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

GIVEN under my hand and notarial seal, this..... day of.....A. D. 190.....

.....

Notary Public.

Stockholder's Proxy.

Know All Men By These Presents:

That the undersigned being the owner of record of Fifty shares of the capital stock of The John Doe Electric Co., of Chicago, do hereby make, constitute and appoint Richard Roe, of Chicago, my true and lawful attorney for me and in my name, place and stead, to attend the annual meeting of the stockholders of said corporation to be held at 333 Plymouth Ave., in the City of Chicago, on the fifth day of May, A. D. 1908, or at any adjournment thereof, and to represent me, and for me and in my name and stead to vote at said meeting upon the said shares of stock standing in my name, upon any and all questions that may be presented thereat, and in the transaction of any other business which may come before said meeting, or any adjournment thereof, as fully as I could do if personally present at the doing thereof, and I hereby ratify and confirm all that my said attorney may do by virtue hereof.

In Witness Whereof, I have hereunto set my hand and seal this first day of May, 1908.

William Smith. [Seal.]

Witness,

Henry James.

RULES GOVERNING THE LIST

OF

STOCKS AND BONDS

ON THE

CHICAGO STOCK EXCHANGE.

"Article XIX."

"APPLICATION TO PLACE STOCKS, ETC., ON THE LIST."

"Sec. 1. All applications for placing securities on the regular list shall be made to the Committee on Stock List in writing, and signed by the parties desiring to have the securities listed."

"Sec. 2. If a stock, the application must state the amount of authorized capital, which in every case must not be less than $200,000, the par value of shares, the number of shares issued, whether dividend paying, and if so, time and place of dividend, the address of the transfer office or offices, the amount of funded or floating debt, etc., all of which must be certified to by the officers with the seal of the company attached."

"Sec. 3. If a bond or loan, the application must state the amount authorized, which in every case must not be less than $200,000, the amount outstanding, when due, percentage of interest, when and where payable, whether taxable, whether guaranteed, and by whom, name of trustee, if any, etc."

"Sec. 4. If the Stock List Committee approve the application, they shall report to the Governing Committee for final action."

"Sec. 5. A charge of one hundred dollars will be made in all cases for listing either stock or bonds, to be paid to the secretary of the Exchange before the security shall be placed upon the official list of the Exchange."

"Sec. 6. All applications for placing securities on the unlisted list shall be made in writing by a member of the Exchange, and after approval by the Stock List Committee, shall be submitted to the Governing Committee, and if approved by the latter committee shall be placed upon said list without charge."

"ARTICLE XX."

"REGISTRY OF STOCKS."

"The Exchange will not call or deal in any active speculative stock of any company, a registry of whose stock is not kept in some responsible bank or trust company, or other satisfactory agency, and which shall not give public notice at the time of establishing such registry of the number of shares so entrusted to be registered, and which shall not give at least thirty days' notice through the newspapers, and in writing to the President of the Exchange, of any intended increase of the number of shares, either direct or through the issue of convertible bonds, and which shall not at the same time, give notice of the object for which such issue of stocks or bonds is to be made."

SYNOPSIS OF THE CORPORATION LAWS

of the States of

New Jersey, Delaware, Maine and South Dakota.

NEW JERSEY.

Business corporations are created only under a "General Act."

They are given the following special powers: Succession by its corporate name, etc.; hold, purchase or convey real estate and personal property, not exceeding, however, the amount limited in its charter; to consolidate with, or to hold stock or securities in other corporations doing the same or similar business, etc., and generally to do and perform any lawful act usually incident to such corporate bodies.

They may be formed for any lawful purpose, by three or more persons, and the provisions for regulating the business, or defining the powers of the company, or its directors and stockholders, may be incorporated in its certificate of incorporation.

Business corporations of this state may conduct business in other states or foreign countries, and have offices outside of this state, but must maintain their "principal office" within the state; they may purchase stock of any other corporation, or property, and issue their own stock in payment; and such stock is regarded as fully paid, when adequate value is received therefor.

Stock may be paid in installments, except $1,000, the minimum with which a corporation can begin business; upon the payment of such installment of the capital stock, the law provides that the officers must sign and file with the department of state, a certificate showing the amount of the capital paid in and how; that is, whether it has been paid in property or money. Such corporations must have at least three directors, and one of them must be an actual resident of the state.

The president, secretary and treasurer may be chosen by the stockholders or the directors, as the by-laws may provide, but they must be elected annually.

The president must be one of the directors.

The stock transfer books are required to be kept at the company's office in the state, but other books may be kept outside the state.

Stockholders may vote by proxy.

There is no stockholders' liability beyond the amount of the face value of their stock.

Stockholders' meetings must be held at the principal office of the corporation in this state; and a majority *in interest* constitutes a quorum.

The directors' meetings may, however, be held outside of the state, if the by-laws or certificate of incorporation so permits.

Corporations may hold, purchase, mortgage, and convey real and personal property outside of the state, provided such powers are included in the objects of the company.

Directors may also be elected annually; and if it is provided for in the original certificate of incorporation, the directors may be classified so as to elect a given class for different terms; but the term of one class must expire each year, and no class of directors can be elected for more than five years.

Corporations must file with the Secretary of State, within thirty days after the first election of directors and officers (and annually thereafter, within thirty days after the time appointed for holding the annual election of directors), a report stating facts constituting compliance with the law, such as the number and addresses of its officers and directors, etc.; the location of the company's principal office in this state; the name of its representative or agent in charge of its office, upon whom legal process against the corporation can be served.

Fees For Incorporating: There must be paid to the Secretary of State at the time of incorporating, not less than twenty-five dollars, *i. e.*, for any corporation whose authorized capital does not exceed one hundred and twenty-five thousand dollars, and twenty cents per one thousand for each additional one thousand dollars of capital authorized.

There is an annual franchise tax on corporations.

Delaware.

Business corporations are created only under a "General Act."

They are given the following special powers: Succession by its corporate name, etc.; to hold, purchase

or convey real estate and personal property; to guarantee purchase, hold, assign, pledge, etc., stocks and bonds of other corporations, etc.; and generally to do and perform any lawful act usually incident to such corporate bodies.

They may be formed for any lawful purpose by three or more persons, and the provisions for regulating the business, or defining the powers of the company, or its directors and stockholders, may be incorporated in its certificate of incorporation.

Business corporations of this state may conduct business in other states or foreign countries, and have offices outside of this state, but must maintain their "principal office" within the state; stock subscriptions may be paid in money, property or services; and the statutes provide that, in the absence of actual fraud, the directors' valuation is conclusive.

There may be different classes of stock, and it may be paid in installments (except $1,000, which is the minimum with which a corporation can begin business).

Every corporation must have at least three directors, and one of them must be an actual resident of the state.

The president, secretary and treasurer may be chosen by the stockholders or the directors, as the by-laws may provide, and they hold office until their successors are elected.

The president must be one of the directors.

The stock transfer books are required to be kept at

the company's office in the state, but other books may be kept outside the state.

Stockholders may vote by proxy.

Stockholders may limit their liability to the amount of the face value of their stock.

Stockholders' meetings must be held at the principal office of the corporation in this state, unless the by-laws otherwise provide.

The directors' meetings may be held outside of the state, if the by-laws permit.

Corporations may hold, purchase, mortgage, and convey real and personal property outside of the state, providing such powers are included in the objects of the company, and they may consolidate with other corporations.

Directors must also be elected annually; and if it is provided for by resolution of the stockholders, the directors may be classified so as to elect a given class for different terms; but the term of one class must expire each year, and no class of directors can be elected for more than three years.

Annual reports are required, and upon the written request of any creditor or stockholder, corporations must file with the Secretary of State, within thirty days after such request being made, a certificate stating the amount of money or property paid or conveyed to the corporation on account of the stock subscriptions, and the amount of capital stock then issued and outstanding, etc.; and if they fail to comply with such request, the officers, whose duty it is to pre-

pare such statement, shall be jointly and severally liable with the corporation for all debts.

FEES FOR INCORPORATING:

Certificate of Incorporation.

For each $1,000 of the total capital stock authorized ..... $ .10
For each $1,000 of the total capital stock authorized, above $2,000.000 ..... $ .05
In no case less than $10.00

Certificate of Increase.

And for each $1,000 of increase of capital stock, additional (but in no case less than $5.00) ..... $ .10

Certificate of Agreement of Consolidation or Merger.

For each $1,000 of capital stock of new company, over and above the total capital stock of the companies so consolidated or merged ..... $ .10

Certificate of Dissolution.

Change of name, amended certificate of organization, decrease of capital stock and increase or decrease of number of shares $10.00
Other certificates ..... $ 5.00

There is a franchise tax on corporations, proportionate to amount of the authorized capital stock.

MAINE.

Business corporations are created only under a "General Act."

They are given the following special powers: Succession by its corporate name, etc.; to hold, purchase

or convey real estate and personal property; to own or hold stock in other corporations, etc.; and generally to do and perform any lawful act usually incident to corporate bodies.

Corporations may be formed for any lawful purpose, by three or more persons, none of whom need be residents of this state.

Corporations of this state may conduct business in other states or foreign countries, and have offices outside of this state, but must maintain their "principal office" within the state; stock subscriptions may be paid in money, property or services; and the Act says that, in the absence of actual fraud, the directors' valuation is conclusive, but a decision of the State Supreme Court makes this provision doubtful.

Stock may be paid in installments, and there is no minimum with which a corporation may start business.

Bonds may be issued and payable in installments. (See 1907 Amendment.)

Every corporation must have at least three directors, none of whom are required to be actual residents of the state, but they must all be stockholders.

The president, clerk, secretary and treasurer may be chosen by the stockholders or the directors, as the by-laws may provide and they hold office until their successors are elected.

The president must be one of the directors.

Stock transfer books are required to be kept at the company's office in the state, but other books may be kept outside the state.

Stockholders may vote by proxy, granted within thirty days of the meeting.

Stockholders may limit their liability to the amount of the face value of their stock.

Stockholders' meetings must be held at the principal office of the corporation in this state, unless the by-laws otherwise provide.

The directors' meetings may be held outside of the state, if the by-laws permit.

Corporations may hold, purchase, mortgage, and convey real and personal property outside of the state, providing such powers are included in the objects of the company.

Directors must also be elected annually; and if it is provided for by resolution of the stockholders, the directors may be classified so as to elect a given class for different terms.

The 1907 legislature provided for annual reports to be made similar to those now required in Illinois, and for a failure so to do, the charter to become "suspended."

Fees For Incorporating: About twenty-five dollars for state fees and for recording certificates, etc., for all corporations with capitalization of ten thousand dollars or less; and fifty dollars when the same exceeds ten thousand dollars, and up to and including five hundred thousand dollars; and ten dollars for each hundred thousand dollars in excess of five hundred thousand dollars; besides there are several other fees provided by statute for recording, etc., amounting to some twenty dollars.

There is an annual franchise tax, as follows (Laws of 1907):

"Every corporation incorporated under the laws of the state, except such as are excepted by section twenty-six of chapter forty-seven, shall pay an annual franchise tax of five dollars, provided the authorized capital of said corporation does not exceed fifty thousand dollars, of ten dollars, provided said authorized capital exceeds fifty thousand dollars, and does not exceed two hundred thousand dollars; of fifty dollars, provided said authorized capital exceeds two hundred thousand, and does not exceed five hundred thousand dollars; of seventy-five dollars, provided said authorized capital exceeds five hundred thousand dollars, and does not exceed one million dollars; and the further sum of fifty dollars a year for each one million dollars, or any part thereof, in excess of one million dollars."

South Dakota.

Business corporations are created only under a "General Act."

They are given the following special powers: Right of succession by its corporate name; voting by proxy; forfeiture of stock for non-payment; holding, purchase or convey real estate (for the needs of its business) and personal property in or outside of state, etc., and generally to do and perform any lawful act usually incident to such corporate bodies. Corporations may be formed for any lawful purpose, by three or more persons; one-third of such incorporators must be residents of this state.

Corporations of this state may conduct business in

other states or foreign countries, and have offices outside of this state; but must maintain a "domiciliary office" within the state.

Stock may be paid in installments, in money, property or services.

Every corporation must have at least three directors, and not more than eleven.

The president, secretary and treasurer may be chosen by the stockholders or the directors, as the by-laws may provide, and one of such officers or one of the directors must be a resident of the state.

The president must be one of the directors.

Stockholders may vote by proxy.

Stockholders are only liable to the amount of their unpaid stock subscriptions (except for labor claims), and this liability is not discharged by transfer of stock.

Stockholders' meetings may be held at an office of the corporation in this state, or elsewhere, as the by-laws provide, and a majority *in interest* constitutes a quorum.

The directors' meetings may be held outside of the state, if the certificate of incorporation so provides.

Directors must be elected annually.

Annual reports are provided for; and stockholders representing twenty per cent. of the stock issued, may require a special report at any time.

Fees for incorporating.

Authorized capital stock of	$ 25,000 or less	$ 10.00
Over $25,000 and not exceeding	100,000	15.00
Over $100,000 and not exceeding	500,000	20.00
Over $500,000 and not exceeding	1,000,000	30.00
Over $1,000,000 and not exceeding	1,500,000	40.00
Over $1,500,000 and not exceeding	2,000,000	50.00
Over $2,000,000 and not exceeding	2,500,000	60.00
Over $2,500,000 and not exceeding	3,000,000	70.00
Over $3,000,000 and not exceeding	3,500,000	80.00
Over $3,500,000 and not exceeding	4,000,000	90.00
Over $4,000,000 and not exceeding	4,500,000	100.00
Over $4,500,000 and not exceeding	5,000,000	110.00
Over $5,000,000		150.00
For appointment of Resident Agent		5.00

For certified copies, 25c per folio of 100 words and $1.00 for certificate.

There are no annual franchise or other fees.

Note: As the corporation laws of the various states are constantly undergoing changes, it will be necessary to refer to the laws in force at the time of inquiry, in order that accurate information may be obtained.

Foreign Corporations.

"An Act entitled 'An act to regulate the admission of foreign corporations for profit, to do business in the State of Illinois.' (Approved May 18, 1905; in force July 1, 1905.)"

"Section 1. Be it enacted by the People of the State of Illinois represented in the General Assembly: That before any foreign corporation for profit shall be permitted or allowed to transact any business or exercise any of its corporate powers in the State of Illinois, other than insurance companies, building and loan companies and surety companies, they shall be required to comply with the provisions of this act and shall be subject to all of the regulations prescribed herein, as well as all other regulations, limitations and restrictions applying to corporations of like character organized under the laws of this state."

"Sec. 2. When any corporation organized under the laws of any foreign state or country, for the transaction of business for profit, desires admission into the State of Illinois, for the purpose of transacting business or exercising its corporate powers or franchise it shall make application to the Secretary of State, signed and sworn to by the president and secretary, stating what business such corporation proposes to pursue under its charter, the amount of capital stock of such corporation, whether it is transacting or it is intended that it shall transact business in any other state or country, the proportion of its business intended to be carried on in the State of Illinois, the amount paid in upon its capital stock, what property and assets and an estimate of the value thereof, will be employed in the business of said corporation in the State of Illinois; if any of its capital subscribed has not been paid in what disposition is to be made thereof,

the names of the president, secretary and directors of said corporation and their residences, where its principal office in Illinois will be located and the name and address of some attorney in fact, upon whom service can be had in all suits commenced in this state and, if required by the Secretary of State, the names and residences of all stockholders in said corporation as shown by its records, and such corporation shall file with the Secretary of State, copy of its charter or articles of incorporation, or in case such corporation is incorporated merely by a certificate then a copy of its certificate of incorporation duly certified and authenticated by the officer who issued the original, or by the recorder or registrar of the office in which said original charter, articles or certificates may have been recorded."

"The Secretary of State shall have power to prescribe the form of such application and may, in addition thereto, propound such interrogatory or interrogatories to the applicants respecting the character of the business in which said corporation proposes to engage, the amount of its capital stock, the proportion of its business that it is intended shall be carried on in this state, and the proportion and location of its business in other states or countries, and such interrogatories shall be answered under oath and the interrogatories and answers thereto shall be filed with said application and with the certified copy of its charter and shall be and operate as a limitation upon the powers of said corporation to transact business in the State of Illinois."

"The Secretary of State, upon the admission of such foreign corporation to do business in the State of Illinois, shall issue a certified copy of all papers, including certified copy of the charter of said corpora-

tion, and shall state, in a certificate of authority to do business issued by him, the powers and object of said corporation which may be exercised in this state, not in conflict with the law or public policy of this state, and no corporation shall, by the certificate of the Secretary of State, be authorized to transact any business in this state for the transaction of which a corporation cannot be organized under the laws of this state, and no foreign corporation shall exercise any powers in this state not authorized by the provisions of its charter."

"Sec. 3. Every foreign corporation admitted to do business in the State of Illinois under the provisions of this act shall constantly keep on file in the office of the Secretary of State an affidavit of the president and secretary, showing the location of its principal business office in the State of Illinois, and the name of some person who may be found at said office, for the purpose of accepting service upon said corporation, in all suits that may be commenced against it, and as often as said corporation shall change the location of its office, or its attorney for receiving and accepting service, a new affidavit shall be filed to take the place of all such affidavits previously filed by the officers of said corporation. Such corporation when admitted to do business in the State of Illinois, under this act shall be required to make such reports from time to time as are required to be made by similar corporations organized under the laws of this state and all regulations now in force or hereafter imposed upon domestic corporations, shall be alike observed and complied with by all foreign corporations doing business in this state."

"No foreign corporation admitted to do business in this state under the provisions of this act shall hold any real estate except such as may be necessary for

the proper carrying on of its legitimate business, nor be permitted to mortgage, pledge or encumber its real or personal property situated in this state to the injury or exclusion of any citizen or corporation of this state who is creditor of such foreign corporation and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other state shall take effect as against any citizen or corporation of this state until all of its liabilities due any person or corporation of this state at the time of recording such mortgage, shall have been fully paid and extinguished. Before any foreign corporation shall be authorized to do business in this state it shall be required to pay into the office of the Secretary of State upon the proportion of its stock represented by its property and business in Illinois, fees equal to those required of similar corporations formed within and under the laws of this state."

* * * "Sec. 5. At any time the Secretary of State may, in his discretion, prepare and propound to the president, secretary, any director or manager of any corporation doing business in this state under the provisions of this act, such interrogatories respecting the character of business being transacted by it, the location of its business, the names and residences of its directors and officers, and the amount of capital paid in, as well as what disposition has been made of capital stock subscribed for or authorized and not paid in, and such interrogatories shall be answered under oath by the officer or director to whom propounded, within five days after receipt thereof, and upon the failure or refusal of such officer or director to fully answer such interrogatories and file the same, with his answers, in the office of the Secretary of State, within ten days after receiving the same, the Secretary of State may revoke the authority of such corporation to do business

in this state, by filing with the certified copy of the charter of such corporation a certificate of revocation, and by the publication thereof for one issue in some newspaper of general circulation in the State of Illinois, and thereafter such corporation shall not exercise any of its corporate powers or franchises in the State of Illinois. When such interrogatories shall have been answered and filed with the answers thereto, in the office of the Secretary of State, if thereby any violation of the law, or of the charter of said corporation, or any excess of its powers and authority to do business in this state is disclosed, a copy thereof, with such information, shall be immediately transmitted to the Attorney General of this state for his action."

"Sec. 6. Every foreign corporation amenable to the provisions of this act, which shall neglect or fail to comply with any of the provisions of the same as herein provided, shall be subject to a penalty of not less than one thousand dollars ($1,000) nor exceeding ten thousand dollars ($10,000), to be recovered before any court of competent jurisdiction, and it is hereby made the duty of the Secretary of State, as he may be advised, or may ascertain that any corporation is doing business in contravention of this act, to report such fact to the Attorney General of this state, and it shall be his duty and the duty of the state's attorney of the proper county to bring such actions at law as shall be necessary for the recovery of the penalties imposed hereby, and in addition to such penalty, if after this act shall take effect any foreign corporation shall fail to comply herewith, no suit may be maintained either at law or in equity upon any claim, legal or equitable, whether arising out of contract or tort in any court in this state."

* * * * * *

Earnings on Stocks and Bonds.

This table gives the approximate earnings on Stocks and Bonds. As an illustration, a 5% stock selling at 90, yields 5.56%. By looking down the 5% column to 90 this will be shown, etc.

Selling Price	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	12%
10	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%	120%
12½	8.	16.	24.	32.	40.	48.	56.	64.	72.	80.	96.
15	6.67	13.33	20.	26.67	33.33	40.	46.67	53.33	60.	66.67	80.
17½	5.71	11.43	17.14	22.86	28.57	34.28	40.	45.71	51.43	57.14	68.57
20	5.	10.	15.	20.	25.	30.	35.	40.	45.	50.	60.
22½	4.44	8.89	13.33	17.78	22.22	26.67	31.11	35.56	40.	44.44	53.33
25	4.	8.	12.	16.	20.	24.	28.	32.	36.	40.	48.
27½	3.64	7.27	10.91	14.55	18.18	21.82	25.45	29.09	32.73	36.36	42.64
30	3.33	6.67	10.	13.33	16.67	20.	23.33	26.67	30.	33.33	40.
32½	3.08	6.15	9.23	12.31	15.39	18.46	21.54	24.62	27.69	30.77	36.92
35	2.86	5.71	8.57	11.43	14.29	17.14	20.	22.86	25.71	28.57	34.29
37½	2.67	5 33	8.	10.67	13.33	16.	18.67	21.33	24.	26.67	32.
40	2.5	5	7.5	10.	12.5	15.	17.5	20.	22.5	25.	30.
42½	2.35	4.70	7.06	9.41	11.76	14.12	16.47	18.82	21.18	23.53	28.23
45	2.22	4.44	6.67	8.89	11.11	13.33	15.56	17.78	20.	22.22	26.67
47½	2.11	4.21	6.32	8.42	10.53	12.63	14.74	16.84	18.95	21.05	25.26
50	2.	4.	6.	8.	10.	12.	14.	16.	18.	20.	24.
52½	1.90	3.81	5.71	7.62	9.52	11.43	13.33	15.24	17.14	19.05	22.86
55	1.82	3.63	5.45	7.27	9.09	10.91	12.72	14.55	16.36	18.18	21.82
57½	1.74	3.48	5.22	6.96	8.70	10.43	12.17	13.91	15.65	17.39	20.87
60	1.67	3.33	5.	6.67	8.33	10.	11.67	13.33	15.	16.67	20.
62½	1.6	3.2	4.8	6.4	8.	9.6	11.2	12.8	14.4	16.	19.02
65	1.54	3.08	4.62	6.15	7.69	9.23	10.77	12.31	13.85	15.38	18.46
67½	1.48	2.96	4.44	5.93	7.41	8.89	10.37	11.85	13.33	14.81	17.78
70	1.43	2.86	4.29	5.71	7.14	8.57	10.	11.43	12.86	14.29	17.14
72½	1.38	2.76	4.14	5.52	6.90	8.27	9.65	11.03	12.41	13.79	16.55
75	1.33	2.67	4.	5.33	6.67	8.	9.33	10.67	12.	13.33	16.
77½	1.29	2.58	3.87	5.16	6.45	7.74	9.03	10.32	11.61	12.90	15.48
80	1.25	2.5	3.75	5.	6.25	7.5	8.75	10.	11.25	12.5	15.
82½	1.21	2.42	3.64	4.85	6.06	7.27	8.48	9.70	10.91	12.12	14.54
85	1.18	2.35	3.53	4.71	5.88	7.06	8.24	9.41	10.59	11.76	14.12
87½	1.14	2.29	3.43	4.57	5.71	6.86	8.	9.14	10.29	11.43	13.71
90	1.11	2.22	3.33	4.44	5.56	6.67	7.78	8.89	10.	11.11	13.33
92½	1.08	2.16	3.24	4.32	5.41	6.49	7.57	8.65	9.73	10.81	12.97
95	1.05	2.11	3.16	4.21	5.26	6.32	7.37	8.42	9.47	10.53	12.63
97½	1.03	2.05	3.08	4.10	5.13	6.15	7.18	8.21	9.23	10.26	12.31
100	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	12.
105	.95	1.90	2.86	3.81	4.76	5.71	6.67	7.62	8.57	9.52	11.43
110	.91	1.82	2.73	3.64	4.55	5.45	6.36	7.27	8.18	9.09	10.91
115	.87	1.74	2.61	3.48	4.35	5.22	6.09	6.96	7.83	8.70	10.43
120	.83	1.67	2.5	3.33	4.17	5.	5.83	6.67	7.5	8.33	10.
125	.8	1.6	2.4	3.2	4.	4.8	5.6	6.4	7.2	8.	9.6
130	.77	1.54	2.31	3.08	3.85	4.62	5.38	6.15	6.92	7.69	9.23
135	.74	1.48	2.22	2.96	3.70	4.44	5.19	5.93	6.67	7.41	8.89
140	.71	1.43	2.14	2.86	3.57	4.29	5.	5.71	6.43	7.14	8.57
145	.69	1.38	2.07	2.76	3.45	4.14	4.83	5.52	6.21	6.90	8.28
150	.67	1.33	2.	2.67	3.33	4.	4.67	5.33	6.	6.67	8.
155	.65	1.29	1.94	2.58	3.23	3.87	4.52	5.16	5.81	6.45	7.74
160	.63	1.25	1.87	2.5	3.12	3.75	4.37	5.	5.62	6.25	7.5
165	.61	1.21	1.82	2.42	3.03	3.64	4.24	4.85	5.45	6.06	7.27
170	.59	1.18	1.76	2.35	2.94	3.53	4.12	4.71	5.29	5.88	7.06
175	.57	1.14	1.71	2.29	2.86	3.43	4.	4.57	5.14	5.71	6.85
180	.56	1.11	1.67	2.22	2.78	3.33	3.89	4.44	5.	5.56	6.67
185	.54	1.08	1.62	2.16	2.70	3.24	3.78	4.32	4.86	5.41	6.49
190	.53	1.05	1.58	2.11	2.63	3.16	3.68	4.21	4.74	5.26	6.32
195	.51	1.03	1.54	2.05	2.56	3.08	3.59	4.10	4.62	5.13	6.15
200	.5	1.	1.5	2.	2.5	3.	3.5	4.	4.5	5.	6.

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